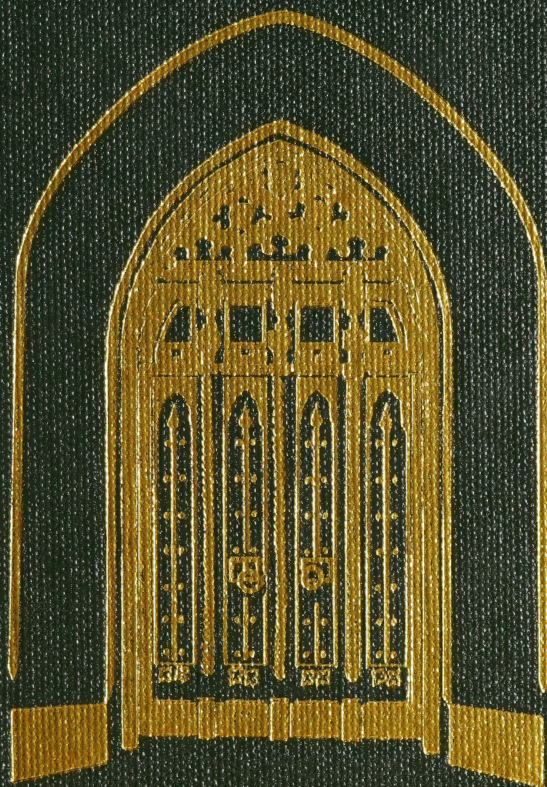


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SELECTED DECISIONS
OF
SPEAKER JOHN A. FRASER



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**SELECTED DECISIONS
OF
SPEAKER FRASER**

**Volume II
with Index**





CHAPTER 6 — FINANCIAL PROCEDURES

Introduction

The written rules and parliamentary practices governing the area of financial procedures—specifically, the business of Supply, the business of Ways and Means, and the Royal Recommendation—are among the most intricate and difficult to understand. The roots of these practices are found deep in British parliamentary history, and involve not only the process by which the various taxation and appropriation bills and substantive bills with financial implications are introduced and passed, but also touch upon the relationships between the Crown and the House of Commons and between the Senate and House of Commons.

Their complexity led Speaker Fraser, when ruling on many of these archaic and exacting points, to offer a detailed explanation of the process of Supply and of Ways and Means, and to reflect seriously on the issues brought before the Chair which touched upon the financial prerogatives of the Crown and, more particularly and profoundly during his term, upon the relationship between the two Houses.

For the sake of clarity, a brief explanation of the business of Supply and the business of Ways and Means follows. The business of Supply is the process by which the Government submits its projected spending plans for parliamentary approval. The process has two phases: the legislative phase, which involves the estimates and the necessary appropriation bills, and a general debate phase, which focuses on opposition Supply motions, the number and disposition of which is governed by specific Standing Orders. The business of Ways and Means is the process by which the Government obtains the necessary resources to meet its expenses. It is, in essence, the mechanism by which the Government raises taxes, presents national Budgets and thus influences the nation's economy. The process has two phases: the Budget presentation, in which the Minister of Finance delivers an economic statement and tables notices of Ways and Means motions, and the legislative phase, in which a notice of a Ways and Means motion is given and then concurred in as a prerequisite to the first reading of any tax bill proposing an increased charge on the taxpayer.

The nineteen decisions selected for this chapter divide logically into Supply issues, Ways and Means issues, and practices with respect to the Royal Recommendation. With respect to Supply issues, the decisions touch upon the continuing order for the business of Supply, the use of Governor General's Special Warrants, the validity of certain Votes contained in the Estimates and the presentation of information relating to such Estimates, the designation of allotted days, and the procedural validity of opposition day motions and amendments proposed to such motions.

With respect to Ways and Means issues, the selected decisions touch upon the convention of secrecy concerning the budget as well as other taxation matters, upon the importance of proper wording of Ways and Means motions, and finally upon the necessity of having adopted such a motion prior to the introduction of the relevant bill.

Also included in this chapter are decisions pertaining to the financial prerogatives of the Crown, as expressed in the Royal Recommendation, and of the House, as outlined in the Standing Orders. In key rulings dated July 11, 1988, and April 26, 1990, Speaker Fraser studied and articulated the rights of the House in response to Messages from the Senate which, according to Members, infringed upon such prerogatives. On April 23, 1990, Speaker Fraser undertook to define our practice with respect to the Royal Recommendation, while acknowledging that "to many of our viewing audience, and indeed many of the honourable Members of the House, the subject matter of the financial initiative of the Crown sounds like an extremely Byzantine and hopelessly complicated matter."

FINANCIAL PROCEDURES

Supply

Lack of quorum during Supply proceedings: loss of the continuing order for the business of Supply; reinstatement on the *Order Paper*

April 3, 1990

Debates, pp. 10119-21

Context: During the consideration of an opposition Supply motion on Friday, March 30, 1990, Mr. Jim Hawkes (Chief Government Whip) rose to inform the Chair that he did not see a quorum. The bells were rung and no quorum having resulted, the Acting Speaker (Hon. Steven Paproski) adjourned the House pursuant to Standing Order 29(3).¹

On Monday, April 2, 1990, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a question of privilege to allege that the call for a quorum, which had put a premature stop to the debate, was a breach of the privileges of the House. He argued that the Government had denied the Opposition the right to debate a motion to formulate an environmental action plan, and demanded that the first opposition day for the current Supply period be re-allotted. In his opinion, the loss of the continuing order for Supply nullified the business of Supply for the current session, and reinstatement of the order would make it possible to reinstate not only the first opposition day in the period but also all votable opposition motions. Mr. Gauthier maintained that the standing committees were no longer empowered to consider the Estimates, and that the motion for a new continuing order was part of the management of the business of the House and could therefore be debated under Standing Order 67(1)(p). Other Members also intervened on the matter.² The Speaker took the matter under advisement.

Later, when "Motions" were called during Routine Proceedings, the Hon. Harvie Andre (Minister of State and Government House Leader) moved to restore the continuing order for Supply. He expressed doubts as to the admissibility of the question of privilege, suggesting that a point of order would have been the appropriate way to raise the issue. He indicated that he was prepared to delay moving the motion for a day. Other intervenors also participated in the discussion.³ The Speaker asked the chairmen of all standing committees to take the point raised into account, but stated he did not intend to rule on it immediately because it was central to the question he had undertaken to consider. The Speaker returned to the House on April 3, 1990 to deliver his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: Yesterday the honourable House Leader of the Official Opposition (Mr. Gauthier) raised a question of privilege relating to events of Friday, March 30, 1990, a day designated as the first allotted day of the supply period ending June 30, 1990 under Standing Order 81(17).

The honourable Member argued that the privileges of opposition Members had been breached by the call for quorum made by the Chief Government Whip. Since this had resulted in a count-out, the Acting Speaker, pursuant to Standing Order 29(3), had declared the House adjourned. By count-out I mean there were not enough Members in the House to provide a quorum.

The result, in the view of the honourable House Leader of the Official Opposition, denied opposition Members the right to debate the motion on an environmental action plan and so infringed their privileges. The honourable Member seeks redress through the redesignation of a first allotted day for the current supply period.

The Chair will first deal with this key question. The provisions regarding quorum have been in existence since 1867. Standing Order 29(3), in place since 1982, provides additionally for a 15-minute bell to summon Members. It reads as follows:

If, during a sitting of the House, the attention of the Speaker is drawn to the lack of a quorum, the Speaker shall, upon determining that a quorum is lacking, order the bells to ring for no longer than fifteen minutes; thereupon a count of the Members present shall be taken, and if a quorum is still lacking, the Speaker shall adjourn the House until the next sitting day.

On Friday last, as the *Votes and Proceedings* indicate, no government Members were present for the count. Faced with a count-out, the Acting Speaker declared the House adjourned.

The Chair has carefully reviewed the events of March 30, and it has noted that Orders of the Day were reached and debate duly begun on the opposition motion. Later, under the provisions of Standing Order 26(1), the House continued to sit beyond the ordinary hour of daily adjournment to consider the business before it. In other words, it was moved that the House sit beyond three o'clock that afternoon and that was sustained, so debate was continuing past the ordinary hour of adjournment which was three o'clock. That motion did not come from the government side; it came from the opposition side.

The honourable House Leader of the Official Opposition argues that the quorum call by the Chief Government Whip truncated the debate and effectively robbed the opposition of its allotted day. However, under the circumstances, it is difficult for the Chair to conclude that the government must bear the sole responsibility for the House adjourning for want of a quorum.

It has often been argued that allotted days are a fundamental right of the opposition minorities in the House, offering a specific forum for debate on their concerns. If one accepts, as your Speaker does, that this perspective is accurate, then one is also left to conclude that the opposition must not only accept but would carefully guard the need to maintain a quorum for debate on its items of business.

The honourable Member for Esquimalt—Juan de Fuca (Mr. David Barrett) commented vigorously about the consequences of government Members not responding to the quorum bells. As I said yesterday, this falls into the realm of tactics. I think I also added that what is sauce for the goose is sauce for the gander.

Arguably, if it so wished, the government could have marshalled 15 Members to rise in their places and oppose the extension of the sitting. This it did not do. The invocation of Standing Order 29(3) may have ended the debate earlier than the opposition might have wished, but its effect on the government side is not without considerable consequence as well.

Honourable Members who had planned to speak on the motion may well be disappointed that this proved impossible, but a review of the circumstances offers no evidence that their rights were in any way interfered with or their privileges breached.

Let us turn now to the consequences of the count-out, namely the dropping of the continuing order for supply from the *Order Paper*.

The authorities are clear on this subject. *Bourinot* Fourth Edition states at page 218:

A “count out” will always supersede any question that is before the House; and if an order of the day for supply, or for the reading or committal of a bill, be under consideration at the time, and there is no quorum present, the House must be asked at a subsequent sitting to revive the question that may have lapsed in this way.

The honourable House Leader for the Official Opposition cites Standing Order [81(1)] which reads:

At the commencement of each session, the House shall designate, by motion, a continuing Order of the Day for the consideration of the business of supply.

He goes on to contend that the loss of the continuing order carries dire consequences, namely the loss of all supply proceedings in this session, and that reinstatement of that order will re-establish the number of votable opposition motions available to the parties in opposition.

The honourable Member for Ottawa—Vanier also raised with the Chair the status of the business of supply now before various standing committees of the House. I am referring to the Estimates for fiscal year 1990-91. He claimed that since the continuing order for supply was no longer on the *Order Paper*, standing committees no longer have the authority to continue consideration of Budget votes, at least not until the continuing order is reinstated. I must say the honourable Member argued his case very convincingly. However, the Chair has great difficulty in accepting his statements.

It is true there are no precedents for this situation, but I fail to see how the loss of the continuing order for supply could erase previous decisions by the House to adopt interim supply or refer consideration of the Estimates to its committees. However, the fact remains that the House does not at this time have any mechanism for considering supply proceedings until a continuing order is reinstated on the *Order Paper*.

The Chair agrees with honourable Members that a continuing order must be redesignated, but I do not see how last Friday's events could have simply erased the decisions the House has made to date on supply in this session. I refer honourable Members to the document, *Status of Bills and Motions*, where pages 59 through 66 list the business of supply already considered by the House. I would note, in particular, the decisions of February 22, 1990, No. 31 on page 64 of the *Status*, referring the Main Estimates, 1990-1991 to standing committees where they are now under consideration.

The authorities are clear on the consequences of reviving a dropped order. I quote from *Erskine May*, Twenty-First Edition at page 315:

If on such an order of the day procedure has been commenced and interrupted, the proceeding thus revived is set down for resumption at the position indicated by the last decision of the House entered upon the *Votes and Proceedings*.

I would therefore rule that once the order for supply has been re-established, the business of supply will resume at the point of the last House decision; namely awaiting the second allotted day in the current period to be designated. As far as the number of votable motions are concerned, we are also at the same point we were last Friday. There remain no more votable motions available in the current supply calendar.

Next, I would like to deal with the fourth and final point raised by the honourable Member for Ottawa—Vanier. Put simply, he asks if the motion of the minister for the redesignation of the permanent order of supply is a debatable motion, pursuant to Standing Order 67(1)(p), which reads as follows:

(p) such other motion, made upon Routine Proceedings, as may be required for the observance of the proprieties of the House, the maintenance of its authority, the appointment or conduct of its officers, the management of its business, the arrangement of its proceedings, the correctness of its records, the fixing of its sitting days or the times of its meeting or adjournment.

The argument of the honourable Member for Ottawa—Vanier was supported by the honourable Member for Kingston and the Islands (Mr. Peter Milliken), who further argued that a July 3, 1917 precedent was not applicable because it dealt with reinstatement of a bill at second reading stage. He also claimed that Standing Order 67(1)(p) is the operative mechanism to reinstate the supply proceedings ordered by way of notice and debate.

The July 3, 1917 case was indeed about a bill being reinstated and the Speaker did rule based on a quote of *May Twelfth Edition*, page 219, that the motion did not require notice and was not subject to debate. Following this precedent there are others: Wednesday, March 12, 1919 and August 1, 1956, to mention only two.⁴ The latter is important because the House had just reviewed in 1955, the equivalent of Standing Order 67(1)(p), which was essentially worded the same as it is today. Yet a superseded order was reinstated on August 1, 1956, without debate or notice. It was not treated as the equivalent of Standing Order 67(1)(p).

I should also deal with the points of the honourable Member for Kamloops (Mr. Nelson Riis) who argued that a lapsed order for supply should be considered as a matter of confidence. On that point I shall only say that a lapsed order is not a decision of substance by the House. It is only the consequence of the House not having appointed a day for consideration of such an order. Furthermore, the motion before the House last Friday was due to expire without question put pursuant to Standing Order 81(17). It is therefore difficult to invoke the usual convention of a lost decision in the House on a matter of confidence.

The honourable Member also referred to page 422 of *Bourinot Fourth Edition* which refers to a lapsed order in committee of supply. *Bourinot* states clearly that this would require notice of a motion for the House to resolve itself into committee again. This reference relates to the 19th century British practice. The Chair has however found a more recent case in Canadian practice.

On June 9, 1938, an identical situation developed in committee of supply and the reinstatement for the House to resolve itself back into committee was brought forward on June 10, 1938, that is the next day, without debate or notice and no objection was taken.⁵ In any case, the whole supply process was completely revamped in the 1968 reform and the committee of supply was abolished. The present case is unique in our procedure and can only be treated as just another dropped or superseded order as the Chair can find no basis in logic, convention or common sense to treat it any differently.

In summary then, the Chair has found that the quorum call initiated by the government which resulted in the House adjourning for lack of quorum on an opposition day does not constitute a breach of the privileges of this House. Furthermore, the motion for the redesignation of the continuing order for supply does not require notice, is not subject to debate and can be moved forthwith by the Minister.

I want to say something in this regard. Yesterday when the House reached motions, I had indicated by way of a comment earlier that at that point I invited the honourable House Leader to respect the difficulties that we were in because it would have required me to make an immediate order on a complex series of points. The House Leader courteously did that. But we had reached Motions, and I now find that we have to deal with it on the basis as if the House Leader was

dealing with motions. If the House Leader wishes to, I would invite him to move his motion now, because the delay is due to the fact that the Chair had to ask the indulgence of the House to reserve for the ruling.

Postscript: At least two committees did consider the Estimates while the Speaker was considering the question of privilege.⁶

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1. *Debates*, March 30, 1990, p. 10050.
 2. *Debates*, April 2, 1990, pp. 10076-89.
 3. *Debates*, April 2, 1990, pp. 10090-1.
 4. *Debates*, March 12, 1919, p. 398 and August 1, 1956, p. 6781.
 5. *Debates*, June 10, 1938, pp. 3705-6.
 6. *Minutes of Proceedings and Evidence of the Standing Committee on Consumer and Corporate Affairs and Government Operations*, Issue No. 49; *Minutes of Proceedings and Evidence of the Standing Committee on Public Accounts*, Issue No. 31.

FINANCIAL PROCEDURES

Supply

Request for Supply omitted from the Throne Speech: designation of a continuing order for the business of Supply; use of Governor General's Special Warrants while Parliament stands adjourned; Speaker does not rule on constitutional or legal matters; privileges of Members concerning Supply process not breached

May 2, 1989

Debates, pp. 1175-9

Context: On April 6, 1989, after having given the Speaker notice the previous day, Mr. Peter Milliken (Kingston and the Islands) rose on a question of privilege to allege that there had been a breach of all Members' privileges in that the Governor General had omitted to ask the House for Supply in the Throne Speech of Monday, April 3, 1989. Mr. Milliken argued that as a result of this omission, and because the primordial role of the House of Commons in financial matters had been ignored, the Government had no valid grounds for asking the House to designate a continuing order for the business of Supply.¹ Moreover, Mr. Milliken said he feared that the Government intended to rely on Governor General's Special Warrants, which are permitted by virtue of section 30 of the Financial Administration Act when the House is not sitting, instead of having spending estimates examined and approved by Parliament. The Hon. Doug Lewis (Minister of Justice and Attorney General of Canada) said that the House should not hear this question of privilege because it had not been raised at the first possible opportunity. He asserted that the question should have been raised on Tuesday, April 4, 1989, when the House voted unanimously on a motion respecting the business of Supply for the calendar year 1989.² Other Members also intervened in the matter.³ The Speaker reserved his judgement and on May 2, 1989, returned to the House to deliver his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I am now ready to rule on the arguments presented several days ago with respect to the Question of Privilege relating to the supply process. On April 6, after giving the Chair the required written notice, the honourable Member for Kingston and the Islands and the honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria) rose in the House to argue a case of privilege.

The honourable Member for Kingston and the Islands claimed that the ancient rights of Members of Parliament have been denied in so far as the granting or withholding of Supply. I quote from page 177 of *Hansard*:

Why did we move to consider the Business of Supply when no supply had been requested from Her Excellency, the Governor General, at the opening of the Session?

Both he and the honourable Member for Glengarry—Prescott—Russell also expressed serious reservations as to the use of Governor General's warrants by the Government as it is their view that such use of warrants has superseded the usual Supply process.

During the discussion on this question of privilege, the honourable Member for Kamloops (Mr. Nelson Riis) also rose in support of the contention that the rights of the House had been breached. In reply, the honourable Minister of Justice and Attorney General argued that the question of privilege had not been raised at the first opportunity available. He indicated that all of the requirements of the *Financial Administration Act* had been met by the Government.

Before I get into the substantive issues on Supply, I would briefly like to address the matter of whether this question was brought forward within a reasonable period of time as required by our practices. The honourable Members for Kingston and the Islands and for Glengarry—Prescott—Russell gave the Chair written notice on April 5 that they would be raising a question of privilege. Since one of their complaints arose as a result of apparent omissions in the Speech from the Throne which was read on April 3, the very earliest occasion that they could have raised the matter was on April 4. On that day, by agreement, the House only heard two short speeches before adjourning. In fairness to all honourable Members, I have to conclude that notice was given at a reasonably early opportunity.

I wish to remind honourable Members that questions of privilege must be raised in a timely fashion. If a matter is so serious that the privileges of this House must be invoked, then it stands to reason that the practice of bringing these matters to the attention of the House at an early opportunity must be respected. In the present submission, I feel that the practice has been respected.

Since the business of Supply is a complex procedure and since many of the new Members have not yet had an opportunity to examine its components, I feel that this would be an appropriate time to briefly review certain aspects of the Supply process.

The business of approving the spending plans of the Government is one of the major responsibilities of Parliament. The process by which the Government submits its projected annual expenditures for parliamentary approval is known as the Supply process. Once Supply is granted, the Government can draw on the Consolidated Revenue Fund to meet its financial obligations.

The basic principle supporting the Supply process is that the Sovereign, or the Crown, is charged with the management of all payments for Public Service. The Crown acting on the advice of its responsible ministers makes known to the Commons the pecuniary needs of the Government; the Commons, in return, grants such supplies as are needed to satisfy these demands.

The House of Commons has an important role to play in this complicated process. It is in the Commons where the Government's projected expenditures—known as the “Estimates”—are first tabled and the legislation to implement the estimates—known as the Appropriation Bill—is introduced. Section 53 of the *Constitution Act, 1867* stipulates that all financial legislation, and this includes Government expenditures, must originate in the House of Commons. This requirement is reaffirmed in the Commons' own rules of procedure, more specifically Standing Order 80(1), a point which was clearly referred to by honourable Members the other day.

As a result of the fact that Main Estimates for the upcoming fiscal year are usually adopted at the end of June, the Government could be without funds from the beginning of the fiscal year in April to the end of June. The rules accordingly provide for the Government to request an advance against the Main Estimates which is known as Interim Supply. From time to time during a session, the Government may also require additional funds which are introduced by way of Supplementary Estimates.

During lengthy periods when Parliament is dissolved or prorogued, an urgent need for funds may occur. Under special conditions, provided for in the *Financial Administration Act*, the Government may draw on the Consolidated Revenue Fund after a Special Warrant has been signed by the Governor General. Unlike interim supply and supplementary estimates, the use of Special Warrants is not a routine matter and the Government is required to inform the House, after the fact, when the warrants are tabled. Subsequently the supply granted by the Governor General will be included in the first supply Bill for scrutiny and approval by the House.

Now to address the specific points raised by honourable Members in their question of privilege of April 6.

The first point refers to the fact that in the Speech from the Throne, the Governor General neglected to request the House to appropriate the funds required to carry on the services and expenditures of her Government. Because of this omission, it was argued that the Government could not and should not have asked the House to designate a continuing Order for Supply.

If I may refer honourable Members to the operative Standing Order. Standing Order 81(1) states:

At the commencement of each session, the House shall designate, by motion, a continuing Order of the Day for the consideration of the business of supply.

Honourable Members will note that the Standing Orders use the word “shall” and no specific mention is made in this Standing Order about the necessity of having a request in the Speech from the Throne to appropriate funds. If I may draw your attention to the commentary found in the *Annotated Standing Orders* relating to Standing Order 81(1), page 250, it reads as follows:

During the Speech from the Throne at the start of each session, the Governor General traditionally addresses the House and says, “You will be asked to appropriate the funds required to carry on the services and expenditures authorized by Parliament”.

I would like to stress the use of the word “traditionally”. As the honourable Member for Kingston and the Islands himself pointed out, there have been occasions when the Governor General has neglected to read this traditional phrase in the Speech from the Throne. He specifically referred to two previous cases: September 8, 1930 and December 12, 1988. A careful review of all Speeches from the Throne since 1867 has revealed that there were two other such cases, namely: January 25, 1940 and October 9, 1951. The case of 1951 is of particular interest to the Chair because while no reference was made to Supply in the Speech from the Throne, the House did appoint a Committee of Supply.

The Chair appreciates the comments made by the honourable Member but wishes to point out to the House that the Standing Orders do not specify that a request for funds appear in the Speech from the Throne prior to designating a continuing Order of the Day for Supply. As the *Annotated Standing Orders* explains, this phrase is a tradition but not a requirement of the Standing Orders.

Procedurally speaking, the Government is obligated to act in accordance with the terms of Standing Order 81(1) and I must therefore conclude that the Government has respected the rules of the House in designating a continuing Order of the Day for the consideration of supply.

The Chair would now like to turn its attention to the next issue raised by the honourable Members relating to the use of Governor General Warrants.

Many people are puzzled as to the nature of these Warrants. To begin with, I would like to point out a difficulty we are encountering in the use of terms; there are Governor General Warrants and Governor General Special Warrants. Governor General Warrants as described in Section 28 of the *Financial Administration Act* are used frequently. Every time that Parliament adopts an appropriation Bill and Royal Assent is given, the Governor General must then sign a Warrant before the Government can draw on the Consolidated Revenue Fund.

Governor General Special Warrants are different. When Parliament is not in session and a payment is urgently required for the public good, the Governor in Council may, by order, direct the preparation of a special warrant to be signed by the Governor General authorizing a payment to be made out of the Consolidated Revenue Fund if there is no other appropriation pursuant to which the payment may be made. This is in accordance with Section 30 of the *Financial Administration Act*. The Minister of Justice (Mr. Lewis) when participating in the debate on the question of privilege, was quick to point out that the Government, in issuing the present Special Warrants, did so precisely because of the three conditions just mentioned.

Special Warrants make it possible for the work of Government to continue even though Parliament is not sitting and the Supply process has not been completed, or begun anew. Special warrants may be used to pay the Crown's bills from the time of dissolution until the new Parliament has met or during prorogation and adjournment periods, so long as the terms and conditions of the *Financial Administration Act* are met and respected by the Government.

According to the *Financial Administration Act*, every Special Warrant is to be published in the *Canada Gazette* within 30 days after it is issued. Within 15 days after the commencement of the next session of Parliament, the Government must also table in the House of Commons a statement showing what Special Warrants were issued.

Moreover, the amounts appropriated by special warrants are to be included in the next Supply Bill so that the payments made by Special Warrant will come before the House for review and decision.

The honourable Member for Kingston and the Islands suggested that Special Warrants can only be used during the dissolution of Parliament. His colleague, the honourable Member for Glengarry—Prescott—Russell, made reference to 10 occasions when special warrants were used during this period. According to John Stewart's 1977 book, *The Canadian House of Commons: Procedure and Reform*,⁴ there are 12 instances where special warrants were used. Since 1977, we have found three other such occasions, for a total of 15.

The honourable Member for Glengarry—Prescott—Russell referred to the fact that the only time that a Special Warrant was used outside of an electoral period was to repair the roof of the first Parliament Building in the 1890s. This Act was first adopted in 1878 under the title *An Act to Provide for the Better Auditing of the Public Accounts*. In Section [32(2)] of that Act we read:

If, when Parliament is not in session, any accident happens to any public work or building which requires an immediate outlay for the repair thereof ... the Governor in Council may order a special warrant to be prepared....

It is important to note the phrase, “when Parliament is not in session”. During the early years following Confederation, Parliament only sat for a few months of each year. As time went on, the business of Government became more involved and Parliament met more frequently. In 1951, an amendment to the *Financial Administration Act* actually defined what was meant by the phrase, “when Parliament is not in session”. Further amendments were made to that definition in 1958 and this resulted in the version we have today, namely: “Parliament shall be deemed to be not in session when it is under adjournment *sine die* or to a day more than two weeks after the day the Governor in Council made the order directing the preparation of the special warrant”.⁵

This part of the Act clearly states that a special warrant may be issued during periods when Parliament has been dissolved for an election, prorogued or during periods when Parliament is adjourned for a lengthy period. Honourable Members may be quite correct in stating that all previous special warrants (except for one) were issued after Parliament was dissolved for an election, but if one reads the Act itself, there is no inference that the words “not in session” were to be restricted to dissolution periods. It is an indisputable fact that when both Houses are in a state of prorogation, Parliament is “not in session”.

All this being said, the Chair must now decide whether or not the matters raised by the honourable Members constitute a *prima facie* question of privilege. The Opposition contends that the Government has been using the *Financial Administration Act* to circumvent the traditions and conventions of the supply process. The Government argues that the provisions of the Act have been followed, an Act validly passed by Parliament.

Having just explained the provisions of the *Financial Administration Act* in the matter of Special Warrants, the Chair finds itself in an awkward position for I do not want the House to misconstrue these comments as anything other than background for the information of all honourable Members. The question of whether or not the terms of the *Financial Administration Act* have been respected in this instance is not a matter that was raised in the arguments put forward on April 6, nor indeed is it a matter upon which the Chair would be in a position to rule.

The Chair has no authority to venture beyond the realm of parliamentary practice and procedure into questions of law.

The honourable Members for Kingston and the Islands and for Glengarry—Prescott—Russell argue that conventions in our Constitution have been breached in this instance. The Chair wishes to restate what my predecessors have so often reminded the House, that the Speaker has no role in interpreting matters of either a constitutional or legal nature. Let me quote Citations 117(6) and 240 from *Beauchesne* Fifth Edition:

117.(6) The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

240. The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

In addition, let me refer to a decision of Mr. Speaker Lamoureux of July 8, 1969, on [pages 1319-20] of the *Journals* where he says:

I have had occasion in the past to indicate that it is not the responsibility of the Chair to rule on questions of law or on constitutional questions. This ruling has been made in many instances by previous Speakers. I should like, if honourable Members would allow me to do so, to quote at this time a ruling made by the Deputy Speaker on Friday, October 25, 1963. It reviews some of the authorities on this point: "I have listened with much interest to the argument made by the honourable and learned Member for Rosedale (Mr. Macdonald). I gather the essence of the argument he submits now is that the bill should not be considered, that it is out of order because it is *ultra vires* the Parliament of Canada. My submission at this time is that it should not be the responsibility of the Chair to rule whether a particular bill or particular piece of legislation submitted to Parliament is or is not within the competence of this House."

The reason for these citations are straightforward. The Speaker should not sit in judgment on constitutional or legal matters. That role belongs more properly to the courts and the administration of justice. Previous Speakers have been very careful in strictly addressing themselves to matters of a parliamentary or procedural nature while avoiding dealing with constitutional or legal matters. Similarly, in this instance, the Chair must restrict its examination to the question of a possible infraction of the Standing Orders.

After studying the circumstances of this case to determine whether the ancient rights of Members of Parliament have been denied in relation to the granting or withholding of supplies, the Chair concludes that the Government has respected all of the procedures required by the House. As the honourable Member for Kingston and the Islands has himself said, the House will have an opportunity to pronounce itself on the moneys found in the Special Warrants when the House votes on the next appropriation Bill.

While Members may complain that they do not have an opportunity to examine these expenditures before they have been allotted, the very nature of special warrants calls for the approval of the House after the fact. The cure for that complaint lies more properly within the legislative process by amending the *Financial Administration Act* to the greater satisfaction of the majority of Members in the House. As to the argument that the law has been breached, honourable Members have other avenues available to them to demonstrate and establish those facts.

After considerable reflection, the Chair finds that no Standing Orders have been contravened, and it has not been demonstrated that a *prima facie* breach of a Member's privilege has occurred.

I want to thank honourable Members for raising the matter which is of course fascinating to all of us in this House and to all of us who follow parliamentary traditions and conventions.

I must point out that the response of the Chair has been lengthy but in my view the arguments presented to the Chair were worthy of very serious and lengthy consideration. I thank honourable Members.

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1. *Debates*, April 3, 1989, p. 5.
 2. *Debates*, April 4, 1989 pp. 10-1.
 3. *Debates*, April 6, 1989, pp. 175-83.
 4. Stewart, John B., *The Canadian House of Commons*, Montreal and London: McGill-Queen's University Press, 1977.
 5. *Financial Administration Act*, R.S.C. 1985, C. F-11, s. 30(5).

FINANCIAL PROCEDURES

Supply

Use of Governor General's Special Warrants while Parliament stands adjourned; Members deprived of opportunity to examine pertinent Appropriations Bill; Speaker bound by Special Order; Speaker does not rule on constitutional or legal matters

May 4, 1989

Debates, pp. 1325-6

Context: On May 4, 1989, Mr. Peter Milliken (Kingston and the Islands) rose on a point of order to state that Members of the House would not have an opportunity to examine the Appropriations Bill on which the House was to vote at 5:45 p.m., pursuant to an order it had adopted on April 4, 1989, and which made provision for the confirmation of the moneys granted by virtue of special warrants for the 1988-1989 fiscal year. Mr. Milliken asked that the warrants be referred to special committees of the House, which could then review what should have constituted the Supplementary Estimates for the previous fiscal year. Other Members also intervened on the matter.¹ The Speaker reminded the Members of his decision of May 2, 1989, namely that the remedy for this grievance lay more properly within the legislative process by amending the *Financial Administration Act*. However, he undertook to examine the matter again. Later in the course of the sitting, the Speaker delivered his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I said a few minutes ago, in response to points of order raised by the honourable Member for Kingston and the Islands and the honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria) that I would consider the points. It is important to understand the point that both honourable Members are making. Put as simply as I can put it, it comes down to the following.

While the House was adjourned there were certain special warrants issued because the Government needed money. Those Special Warrants were issued under the provisions of the *Financial Administration Act*. There is a Bill which will be voted on tonight at 5:45 p.m. which, among other things, in Clause 3, and I am reading from the note in the margin, refers to the confirmation of payment under special warrants for the fiscal year 1988-89. Those are the special warrants complained of by the honourable Members.

In order that everyone does understand, ordinarily a Bill comes in, there is first reading, second reading, second reading debate, and if that passes it goes to committee, comes back again in report stage, and then there is third reading.

This Bill which confirms those warrants will not proceed in that manner, because there is a special order which states:

That, when the House reaches Orders of the Day on Thursday, May 4, the House shall debate an Opposition motion, notice of which shall have been given the previous day, and no later than 5:45 o'clock p.m. on May 4, the Speaker shall interrupt debate and put, forthwith and successively, without amendment or debate, every question necessary to dispose of the said motion; and then the Speaker shall put forthwith, and successively, without amendment or debate, every question that may be necessary to dispose of any motion relating to interim supply and for the passing at all stages of the bill based thereon, following which the Speaker shall adjourn the House....

That is the Special Order, and I know that honourable Members know that I am bound by that special order. I cannot interrupt it or interfere with it. It is an Order of the House. I point out that it is also an order that applies today by consent, but that is not a matter which changes the substance of the issue.

The effect of this Special Order is that provided the opposition motion is debated throughout the rest of the afternoon, there will be no time under this Special Order to debate the content of this Bill. In other words, honourable Members have put the point that there is no opportunity to debate the contents, the whys and the wherefores of the moneys asked for and spent under the special warrants. I think I have the honourable Members' point.

I suppose it could also be said that if the opposition motion ended early today, technically there might be some time for debate, but one cannot foretell that. There is a very real possibility that there would not be any time for debate.

The honourable Members also referred to a special report which was filed with the House by the then President of the Treasury Board in 1980. I have been informed that that particular report was filed for information purposes only and it does not form part of the supply process. While it might very well be a good thing that such reports are given to the House under those circumstances, it is not required and I cannot insist upon it.

In my view honourable Members have clearly expressed what to them is a grievance. As I stated at the beginning, that grievance is that the House will pass tonight in all stages a Bill confirming the special warrants, and they have not been debated nor has there been an opportunity for the House to examine and debate them and go through the usual procedure.

The point honourable Members are making is that this would seem, on the face of it at least, to be a breach of parliamentary tradition. We heard some very incisive arguments put a few days ago on the necessity for Parliament to be in command of the spending and that honourable Members have the obligation, which is part of the ancient history of this place, to examine the spending requirements of a Government and either to reject them or pass them.

Having said that, the probability is, as honourable Members have pointed out, that there will not be any examination or debate on these particular warrants. The House, of course, that is, all the Members of this place, at least in theory could defeat the Bill tonight. I say nothing further.

In any event, the position comes down to this: nothing has been done which breaches the rules of this place. That does not mean that the grievance the honourable Members have may not breach some tradition or some convention of this place. But upon that I am helpless to react or to change.

It seems to me the solution is to either amend the *Financial Administration Act* or to amend the Standing Orders. The honourable Members have raised the point in the Chamber a few minutes ago, suggesting that perhaps the Government would refer the whole matter to the appropriate standing committee. Again, as I indicated, I am powerless to order that. That is a matter for consultation between both sides of the House.

In any event, I come back to the point raised by the honourable Member for Kingston and the Islands and the honourable Member for Glengarry—Prescott—Russell. The point they make is clear. The probability is there will be no chance to examine and debate the warrants. Unfortunately, for those Members who are complaining about this, the Speaker is not in a position where the matter can be remedied. But the point the honourable Members have made is there for all to see.

I thank honourable Members for their interventions.

1. *Debates*, May 4, 1989, pp. 1316-9.

FINANCIAL PROCEDURES

Supply

Appropriations Bill; requirement for Royal Recommendation if Bill contains Governor General's Special Warrants issued during previous session

May 4, 1989

Debates, p. 1346

Context: On May 4, 1989, immediately following the reading of the motion for second reading and referral to Committee of the Whole of Bill C-14, An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the 31st March, 1990, Mr. Peter Milliken (Kingston and the Islands) rose on a point of order to argue that the Bill should be accompanied by a Royal Recommendation because it included Special Warrants issued during the previous session, contrary to the provisions of section 54 of the Constitution Act, 1867, and Standing Order 79. Other Members also intervened on the matter.¹ The Speaker delivered his decision immediately. It is reproduced in part below.

DECISION OF THE CHAIR

Mr. Speaker: [...] The essential issue that the Member for Kingston and the Islands puts forward raises the question: Does a supply Bill, because it contains the warrants issued in the previous session, require a Royal Recommendation? That is in effect the issue. The honourable Member has cited Section 54 of the *Constitution Act, 1867* and Standing Order 79. The Chair concedes that Standing Order 79 requires that a Royal Recommendation be attached to any Bill for appropriation of any part of the public revenue.

On the present case in the present Bill, Clause 3 contains the amounts that were appropriated by warrants prior to April 1. They are included in the Bill by virtue of Section 30(4) of the *Financial Administration Act*.

I want to quote that Act because it is important. Subsection 4 reads, in English:

Where a special warrant has been issued pursuant to this section, the amounts appropriated thereby shall be deemed to be included in and not to be in addition to the amounts appropriated by the Act of Parliament enacted next thereafter for granting to Her Majesty sums of money to defray expenses of the public service of Canada for a fiscal year.

If there is any doubt as to what that means, it reads, in French:

Les montants affectés par mandat spécial sont réputés être des avances; ils font partie des montants affectés par la première loi de crédits votée par le Parlement par la suite et ne s'y ajoutent pas.

We are bound by the plain wording of the *Financial Administration Act*. I have to conclude that the warrants have already received Her Excellency's approval and they were tabled in the House. They are now before the House because they are required to be so by the statute to which I have just referred and not as a requirement of the Standing Orders.

I repeat to the honourable Member for Kingston and the Islands that the point he is pursuing, as I said with tenacity and diligence, is in itself an important point. However, as I said earlier this afternoon, it is not within the prerogative of the Chair to resolve what may clearly be a legitimate grievance. It will have to be settled in some other place and in some other way.

I regret to have to inform the honourable Member that his point of order cannot be sustained. As I said earlier today, he may have a grievance and that is a matter for the whole House to deal with.

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1. *Debates*, May 4, 1989, pp. 1345-6.

FINANCIAL PROCEDURES

Supply

Estimates: legislative item; votes must relate to the year for which they are granted; votes deleted from the estimates; proceedings on specific votes ruled null and void

March 20, 1991

Debates, pp. 18728-33

Context: On March 8, 1991, Mr. René Soetens (Ontario) rose on a point of order regarding votes in the Supplementary Estimates (C) for the fiscal year ending March 31, 1991, and in the Main Estimates for the following fiscal year, involving a daily allowance of \$153 payable to Senators for attendance in the Senate. Mr. Soetens argued that this allowance should be ruled out of order because the Parliament of Canada Act, under which sessional allowances are paid to Senators and Members, had not been amended to include the new allowance. He cited a number of precedents in support of his argument that a vote must not be used to obtain authorization for something that should normally be the subject of legislation. Other Members also intervened on the matter.¹ The Speaker postponed the debate to the following week and invited the Members to let him know the date on which they wished to resume the discussion.

On March 12, Mr. Peter Milliken (Kingston and the Islands) rose on a point of order to describe the Liberal Party's position on this matter. He argued that Cabinet had approved the Supplementary Estimates (C) and the Main Estimates via the Royal Recommendation and that it had to accept very direct responsibility for having recommended these expenditures to the House through the Governor General. Mr. Rod Murphy (Churchill) commented at this point that Vote 2c in the Supplementary Estimates (C), providing for payment of the allowance "in the current and subsequent fiscal year," contravened the Financial Administration Act stipulation that the Estimates must be for "services coming in course of payment during the fiscal year".² The Acting Speaker (Mr. Charles DeBlois) thanked the two Members for their contribution and reminded the House that the matter had been taken under advisement. The Speaker returned to the House on March 20, 1991 to deliver his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On Friday, March 8, 1991, the honourable Member for Ontario rose on a point of order to object to the inclusion of items in the Supplementary and Main Estimates which would authorize the payment of \$153 per diem allowance to senators. He argued that the authority to pay such an allowance should have been sought by means of an amendment to the Parliament of Canada Act. He quoted extensive authority to the effect that spending estimates cannot be used to amend legislation, and he invited the Chair to use its authority to rule the offending estimates out of order.

The honourable Member for Kingston and the Islands spoke to the issue on March [12], 1991. He asked the Chair to take into account that the Estimates are recommended to the House by the Governor General but that this recommendation is secured on the advice of Ministers of the Crown.

The honourable Member then referred the Chair to two precedents. One concerned provisions in *Appropriation Act No. 2* in 1965 for the payment of a gratuity to the spouse of a deceased member. The second related to the inclusion in vote 1 under Privy Council Office in *Appropriation Act No. 3* in fiscal year 1989-90 of the salaries for ministers of state who do not preside over a ministry of state.

The honourable Member for Churchill expressed the view that vote 2c in the Supplementary Estimates violated the *Financial Administration Act* in that it sought moneys to be used beyond the current fiscal year. Furthermore, he noted that the allowances in question should have been sought through an amendment to the *Parliament of Canada Act*. For this reason, he explained, the decisions of previous Speakers have been breached.

Finally, the honourable Member for Churchill concluded that it was particularly inappropriate to secure an individual profit for certain Members of Parliament by means that are in any way questionable.

As both the items objected to are estimates requested by the Upper House, the Chair's initial reaction was to consider the propriety of this House interfering with the Estimates of the other place. In the last 20 years or so that the items from the Senate have been before committees of the House of Commons, no witnesses from the other place have appeared before the standing committee charged with considering the estimates from the Upper House. Therefore no guidance can be sought in the review of those estimates.

The "parentage" of the particular items challenged also remains doubtful. The honourable Member for Kingston and the Islands pointed out that these estimates were recommended to the House by the Governor General, and by constitutional convention, he notes, that must indicate that they are approved by cabinet. The honourable Member for Churchill was more direct. He claimed that the Government had improperly brought these estimates before Parliament and that the Government had responsibility for ensuring that they were in proper form. The honourable Member for Calgary West (Mr. Jim Hawkes), on the other hand, has clearly distinguished between government estimates and the estimates from the House of Commons and the Senate.

These latter two, he stated, are not government estimates and come before us through the mechanisms specified in the *Parliament of Canada Act*. Now, section 51 of the *Parliament of Canada Act* provides that the estimates of the House of Commons "shall, on approval by the Board of Internal Economy, be transmitted by the Speaker to the President of the Treasury Board who shall lay

them severally before the House of Commons with the estimates of the government for the fiscal year.” On a plain reading of these words, it appears that the honourable Member for Calgary West is perfectly correct in claiming a special status for the House of Commons estimates. The Chair was not, however, referred to nor has it uncovered any similar legislative provision as respects the Senate.

Against the issue of ownership of the Senate Estimates and the propriety of any intervention by the House of Commons is arrayed a formidable force composed of a substantial body of significant rulings by my predecessors and the provisions of the *Financial Administration Act* and Citation 233 of *Beauchesne* Fourth Edition which states that:

The cardinal principle on which the whole of our financial system is based is that of parliamentary control, and by this is understood not the control of Parliament in its constitutional sense, but control by the Commons alone.

The honourable Member for Ontario has made his case carefully and well. In his intervention, he set out all the relevant sections of the *Parliament of Canada Act* to demonstrate that there is no provision in that statute upon which the Senate’s present request for an allowance could be based. The honourable Member then marshalled the various rulings of the Chair since 1971 in support of the concept that authority to act is received through legislation, whereas money to finance authorized action is received through the passage of an Appropriation Act. He contended that the allowance sought by the honourable senators should have been obtained by means of an amendment to the *Parliament of Canada Act* and, in an impressive survey of Speakers’ rulings, demonstrated that in the past, attempts to legislate or to amend statutes other than Appropriation Acts by means of items inserted in the estimates have been disallowed.

The honourable Member for Churchill agreed that there was an attempt here to do through appropriations what should be done through legislation and that this was in breach of the Speakers’ rulings. He also made the point that the estimates according to section 27 of the *Financial Administration Act* should relate only to expenses for the current fiscal year and drew attention to the fact that Senate vote 2c in the Supplementary Estimates sought authority for the payment of the allowance in the current and subsequent fiscal year. It should also be noted that Senate vote 5 in the Main Estimates 1991-92 seeks the same authority not only for the current and subsequent fiscal years but for all subsequent fiscal years.

The honourable Member for Kingston and the Islands in his intervention did not question the impact of the authorities quoted by the honourable Member for Ontario. Rather, he provided for the Chair’s consideration two precedents which the Chair will discuss briefly.

It appears common ground in the arguments that have been made, first, that statutes ought not to be amended by means of items in the estimates; second, that authority to act in cases where statutory provisions already exist should be sought

by the passage of amending legislation and only then the money to finance that action should be sought through appropriation acts and, third, that funds requested in the estimates must relate only to the fiscal year for which they are requested.

In this event, there remains only for the Chair to decide, as the Member for Kingston and the Islands put it, whether the items in the estimates providing for the senators' allowance fall into the impugned type of estimates.

The honourable Member referred the Chair to a particular item in the schedule to *Appropriation Act No. 2* for 1965 which authorized the payment of a gratuity to the spouse or estate of a deceased member of the Senate or House of Commons. I believe the honourable Member himself recognized that this precedent is of little utility in the current circumstances, because it relates to a time when there was a radically different supply process in this Chamber and, of course, it predates the significant rulings of the Chair in the 1971-84 period.

The honourable Member's second precedent referred to an item in the schedule to *Appropriation Act No. 3* for the financial year 1989-90. Vote 1 under Privy Council Office, he noted, provided for the payment to ministers without portfolios, or to ministers of state who do not preside over a ministry, a salary equal to the salary paid pursuant to the *Salaries Act* to a minister of state who presides over a ministry. There are other provisions therein, but it is not necessary to quote at length. On June 18, 1982, the honourable Member for Calgary Centre (Mr. Harvie Andre) challenged precisely this item. He said, as recorded at page 18607 of *Debates*:

In spite of the Chair's very clear rulings there is one vote ... which seeks to amend legislation. I am referring to Privy Council, Vote 1 which states:

Program expenditures, including the operation of the Prime Minister's residence; the payment to each member of the Queen's Privy Council for Canada who is a minister without portfolio or a Minister of State who does not preside over a Ministry of State of a salary equal to the salary paid to Ministers of State who preside over Ministries of State under the *Salaries Act*, as adjusted pursuant to the *Senate and House of Commons Act*...

The *Salaries Act*, as amended last July, states the remuneration to be paid to each minister. Section 5 states:

The salary of each Minister of State, being a member of the Queen's Privy Council for Canada, who presides over a Ministry of State is \$30,800 per annum.

What Vote 1 of the Privy Council seeks to do, is amend that act, because it says that ministers of state who do not preside over a ministry of state will have a salary equal to that paid to a minister of state who does preside over a ministry of state. That is exactly parallel, Madam Speaker, to a vote which you ruled out of order, appropriately so, last year, being vote 30 of Agriculture in the 1981-82 Main Estimates. That vote stated, and I quote:

Agri-Food Regulation and Inspection—Contributions including compensation at rates determined in the manner provided by Section 12 of the *Animal Disease and Protection Act* to owners of animals affected with diseases coming under that Act that have died or have been slaughtered in circumstances not covered by the Act.

So that vote attempted to extend the act to situations not covered by it. Quite properly, Madam Speaker, you ruled that was an amendment to the legislation. Privy Council, vote 1 does exactly the same thing, and is clearly out of order based on your ruling of last year.

Madam Speaker Sauvé ruled on June 21, 1982, as recorded at page 18646 of *Debates*:

The next item objected to by the honourable Member for Calgary Centre is Privy Council, Vote 1 on the grounds that it seeks to amend legislation and, on this basis, the honourable Member makes a parallel with Agriculture, Vote 30 in the 1981-82 Main Estimates which was ruled out of order on June 12, 1981. I must admit this vote caused particular concern to the Chair. Agriculture, Vote 30 was specifically seeking to go beyond Section 12 of the *Animal Disease and Protection Act* and was ruled out of order for attempting to amend existing legislation, whereas Privy Council, Vote 1 does not refer to specific legislation but is in fact a continuation of a vote in the 1981-82 Main Estimates covered by the *Appropriation Act No. 2, 1981-82*. In other words, Privy Council, Vote 1 does not attempt to amend the *Salaries Act* but provides for the salary of certain Ministers of State assigned by virtue of Section 23 of the *Government Organization Act, 1970*, which is itself the legislative authority required. The authority for the amount can be found in the *Appropriation Act No. 2, 1981-82*. I therefore find Privy Council, Vote 1 also in order.

That 1982 precedent, based, as it was, on existing legislative authority, is not on all fours with the present case. By extension, neither is the 1989-90 identically-worded item referred to by the honourable Member for Kingston and the Islands.

There is a clear line of authority evinced through Speakers' rulings as to the distinction between the proper subject-matter of legislation and the proper subject-matter of supply.

Twenty years ago on March 10, 1971, when the House was just embarking on the present supply practice, Speaker Lamoureux ordered three one-dollar items struck from the motion to concur in the Supplementary Estimates. He explained as recorded at pages 4125-7 that such items when "... they are clearly intended to amend existing legislation, should come to the House by way of an amending bill rather than as an item in the supplementary estimates."³ Speaker Lamoureux had occasion to confirm this principle in both 1973 and 1974.

Mr. Speaker Jerome, called upon to rule on a number of disputed items in Supplementary Estimates on March 22, 1977, characterized the central question to the issue as "whether or not the government can obtain, through passage by

Parliament of a supply item in an appropriation bill, authority which it does not have under existing legislation.” He capsulized the discussion held in respect to that central question around two key points:

... first, changes in legislation ought to be dealt with by legislation and not by supply items. The opportunity to debate, to consider and to discuss the two are totally different. Therefore, where changes to legislation are sought, they ought to be done in the proper way of all stages of a bill. The second point is that appropriation acts have temporary duration, being for the balance of the fiscal year. Therefore, they ought not to be used as a vehicle to finance or authorize on-going programs.

That is in *Debates*, page 4220. In pronouncing on the general question for the sake of providing future guidance, Mr. Speaker Jerome said:

On the general question, it is my view that the government receives from Parliament the authority to act through the passage of legislation and receives the money to finance such authorized action through the passage by Parliament of an appropriation act. A supply item, in my opinion, ought not, therefore, to be used to obtain authority which is the proper subject of legislation.

That is in *Debates*, page 4221. This was further expanded upon on December 7, 1977, in a similar ruling where Mr. Speaker Jerome said:

I think all honourable Members understand that the supply process is confined in its method of debate and exposure to the House in that it is put forward by way of an estimate which is examined by the committees of the House, and, at the end of that process when the estimate is deemed to be reported or in fact reported back to the House, it is dealt with rather quickly by way of a supply bill on the final supply day of the particular semester in which the estimate was originally advanced.

This is a process which has long been adhered to by the House which provides for an examination of the estimates in rather great detail, but does not provide for extensive debate between the various stages of the supply bill. As a result of that, it has long been a tenant [(sic)] of the House that supply ought to be confined strictly to the process for which it was intended; that is to say, for the purpose of putting forward by the government the estimate of money it needs, and then in turn voting by the House of that money to the government, and not to be extended in any way into the legislative area, because legislation and legislated changes in substance are not intended to be part of supply, but rather ought to be part of the legislative process in the regular way which requires three readings, committee stage, and, in other words, ample opportunity for Members to participate in debate and amendment.

That is from *Votes and Proceedings*, page 184.

As the honourable Member for Ontario acknowledged in raising his point of order, Madam Speaker Sauvé in a carefully-structured ruling on June 12, 1981, set out the principles established by her predecessors. She said: “This history shows

that during the past ten years, Members have objected that in one way or another the estimates that have been submitted from time to time by the government have attempted to do more than set out the spending requirements of the government for the next fiscal year. This is of course supposed to be the acknowledged purpose of estimates and appropriation acts.”⁴

In light of this line of authority, the direction the Chair must take in this regard is evident.

The language of both Senate vote 2c in the Supplementary Estimates 1990-91 and of vote 5 in the Main Estimates 1991-92 is specific. Vote 2c reads as follows:

To authorize the implementation of the Forty-first Report of the Standing Senate Committee on Internal Economy, Budgets and Administration, 2nd session, 34th Parliament, adopted by the Senate on June 5, 1990, and to authorize, in the current and subsequent fiscal years, payment of the allowance referred to within the report.

Vote 5 reads:

To authorize the implementation of the Forty-first Report of the Standing Senate Committee on Internal Economy, Budgets and Administration, 2nd session, 34th Parliament, adopted by the Senate on June 5, 1990, and to authorize, in the current and subsequent fiscal years, payment of the allowance referred to within the report.

In both instances authority is sought, first, to implement the Senate committee report which recommended the allowances and, second, to pay the allowances. The very wording of the votes confirms that there is no existing statutory authority under which the allowances could be paid. If the statutory authority existed there would be no need to seek approval for implementation in this fashion. The type of authority sought here is akin to approval in principle and, as was made clear in the rulings of both Speakers Lamoureux and Jerome, should be sought through legislation other than appropriation bills.

The lack of legislative authority on which to base a request for funds exceeding an existing and continuing act of Parliament, alone, would be reason enough for the Chair to order that the offending items be struck from the estimates; but authority is also sought to spend in a time period beyond the current fiscal year. That too is also clearly prohibited. The cycle of supply is articulated at page 677 of *May's* 18th edition: “According to the “principle of annuality”, which is strictly enforced, every financial year is treated as a closed period separate from every other financial year. Money voted for, and revenue received during, a particular year cannot be applied to the use of a subsequent year”; furthermore Citation 483 of *Beauchesne* Fifth Edition refers to “the main Estimates to cover the incoming fiscal year”. Citation 484 states:

The purpose of the Estimates is to present to Parliament the budgetary and non-budgetary expenditure proposals of the Government for the next fiscal year....

May and *Beauchesne* read together leave no room for doubt on this point. Supply requests, through main or supplementary estimates, must relate solely to the fiscal year for which they are granted.

The weight of precedent and the strength of the argument made by Members in the House compel me to find that vote 2c under Parliament in the Supplementary Estimates 1990-91 and vote 5 under Parliament in the Main Estimates 1991-92 are not properly before the House, and are therefore deleted from the estimates. All proceedings relating to those specific votes are declared null and void and there can be no further proceedings relating to those two votes.

The Chair extends its appreciation to the honourable Member for Ontario who so carefully set out his point of order and to the honourable Members for Kingston and the Islands and for Churchill and for Calgary West for their contributions to this procedural debate.

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1. *Debates*, March 8, 1991, pp. 18229-32.
 2. *Debates*, March 12, 1991, pp. 18329-31.
 3. *Debates*, March 10, 1971, p. 4127.
 4. *Debates*, June 12, 1981, p. 10546.

FINANCIAL PROCEDURES

Supply

Estimates: incomplete tabling of Part III following the tabling of Parts I and II; availability of information disclosed during *in camera* session preceding tabling of the Estimates in the House; accuracy of figures in a Part III report

March 16, 1990

Debates, pp. 9381-3

Context: On February 22, 1990, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a question of privilege to object to the Government's tabling of only 73 of the 87 Part III reports after having tabled all of Parts I and II of the Estimates for the year 1990-1991. Other Members also intervened on the matter.¹ The Speaker took the matter under advisement.

Later in the course of the sitting, Ms. Dawn Black (New Westminster—Burnaby) rose on a question of privilege regarding the fact that information about certain programs had not been available during the *in camera* session preceding the tabling of the Main Estimates in the House.²

Moments later, Mr. Vic Althouse (Mackenzie) rose on a point of order to question the accuracy, and indeed the credibility, of the figures in Part III's Agriculture Canada report.³ Having looked into all three of these matters, the Speaker returned to the House on March 16, 1990 to deliver his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: Before commencing debate, I would like to give a ruling which I undertook to do some days ago.

During the course of the sitting, Thursday, February 22, 1990, three different Members raised questions relating to the Estimates and the traditional lock-up preceding their presentation by the President of the Treasury Board.

The first question was raised as a point of order by the honourable Member for Glengarry—Prescott—Russell who noted that while 87 Parts I and II of the Estimates were being tabled, only 73 Part III reports were available and complained about the 14 missing Part III reports.

Later in the day, the honourable Member for New Westminster—Burnaby rose on a question of privilege to object to a lack of information respecting certain specific programs during the lock-up allowing Members an advanced look at the Estimates prior to their tabling.

The third complaint came from the honourable Member for Mackenzie who challenged the accuracy or credibility of data printed in the Part III report for Agriculture Canada.

I have had an opportunity to consider all three cases and am now prepared to rule on them.

With respect to the first matter, the honourable Member for Glengarry—Prescott—Russell argued that the Government breached a rule of the House in not tabling all of the Part III reports at the time Parts I and II of the Estimates were presented. The honourable Member recalled that in 1982 the House had concurred in the Twelfth Report of the Standing Committee on Public Accounts which supported major reforms to the preparation of the Estimates. The honourable Member further argued that in not presenting all of the Part III reports, the Government had failed to respect the expressed wish of the House with regard to Estimates.

The honourable Member for Thunder Bay—Atikokan (Mr. Iain Angus) intervened to support the complaint made by the Member for Glengarry—Prescott—Russell. On behalf of the Government, the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) explained two points. He maintained that the Government had complied with the rules of the House, in that Part II of the Estimates, known as the Main Estimates, are all that are explicitly required to be tabled according to the Standing Orders, and that the Main Estimates were presented in advance of the March 1 deadline.

Moreover, the Parliamentary Secretary indicated that the Government fully intended to provide the 14 missing Part III reports on or before March 12. This statement elicited an objection from the honourable Member for Windsor—Lake St. Clair (Mr. Howard McCurdy), who pointed out that the Standing Orders set March 1 as the date by which the Estimates are to be referred to the standing committees.

I want all Members to know that I have considered this issue very carefully. I have reviewed the Twelfth Report of the Standing Committee on Public Accounts and statements made by the President of the Treasury Board when the present format of the Estimates was introduced over a span of years, beginning, I believe, in 1981.

I can understand the sense of frustration expressed by the honourable Member for Glengarry—Prescott—Russell, but I must point out that technically, the Parliamentary Secretary to the Government House Leader is correct in claiming that the rules, that is the Standing Orders, require simply that the Main Estimates be referred to standing committees by March 1. In the present format of the Estimates, Part II constitutes the Main Estimates, the document that directly relates to the votes that will lead to an Appropriation Act to be adopted by the House usually no later than the end of June.

That said, however, I must also state that when the House concurred in the Twelfth Report of the Public Accounts Committee in 1982, the House endorsed the Committee's support for the new style of presenting the Estimates devised by the Government in response to a recommendation put forward by the Auditor General and the Public Accounts Committee.

This new format makes up the complete Estimates and all three parts are necessary for the standing committees to do their work effectively. Part I provides an overview of the Government's spending plan while Part III gives details for the expenditure proposals and expectations of each department.

Part III, therefore, is necessary to the standing committees if they are to adequately understand the votes they must consider that are presented in Part II, the Main Estimates. In this particular case the frustration is all the greater because the 14 missing reports, I understand, constitute approximately 75 per cent of the Government's proposed spending for the fiscal year 1990-91. Were these documents to remain unavailable, the work of the standing committees would be seriously handicapped.

However, the Parliamentary Secretary indicated at the time that the Government fully intended to present those documents on or before March 12. Indeed, they were tabled on March 5. There remains, I believe, a sufficient opportunity for the standing committees to do their work in the time they have available up to the end of May.

The second objection raised concerning the Estimates was brought up by the honourable Member for New Westminster—Burnaby who complained about the inadequate information she had received from Treasury Board officials during the lock-up prior to the presentation of the Estimates in the House Thursday, February 22.

The Member explained that she had asked specific questions about the impact of the budget on women's programs, multiculturalism, native affairs and programs assisting visible minorities. Despite the fact that officials told her that the information she sought would not be available for a week or so, the honourable Member learned from some women's groups of the effects of the Budget on their organizations shortly after returning to her office after the lock-up. This, she contended, proved that the information was available but that it had been withheld from Members of Parliament. In consequence, the honourable Member raised this issue because she felt it constituted a breach of privilege.

After having examined the question both in terms of privilege and in terms of contempt of the House, I cannot conclude that the question raised by the honourable Member meets the very narrow criteria of privilege, which concerns certain very specific rights deemed necessary for honourable Members to carry out their duties and assume their responsibilities.

The lock-up is provided by the Government in order to give Members information on the Estimates in advance of their presentation in the House. The fact that the Government has undertaken to provide the lock-up suggests, on the face of it anyway, that the Government understands the needs of Members to have this kind of information. At the same time, however, the lock-up is not a procedure of the House and there is no guarantee the Government will furnish absolutely all the information that might be requested.

Moreover, there was nothing in the honourable Member's presentations to suggest that Treasury Board officials sought wilfully to deprive her of the information. Such a situation, while it may indeed be a grievance, does not, in this context at least, constitute a question of privilege or contempt.

Finally, the honourable Member for Mackenzie raised a point of order concerning certain data presented in the Part III report prepared for the Department of Agriculture. Specifically, the honourable Member complained of the way the appropriation or possible appropriation is given for the Farm Credit Corporation listed as a non-budgetary item.

At the time I suggested to the honourable Member that I did not think the Chair could address this question as a point of order. I have subsequently had an opportunity to review this matter and have noted that the Third Report of the Standing Committee on Public Accounts presented last October offered certain criticisms of the way the Department of Agriculture has presented some information in the Part III reports in previous years. As I originally suggested February 22, one avenue open to the honourable Member to obtain redress of his complaint is to raise it in the Standing Committee on Agriculture or in the Public Accounts Committee. It is not an issue which the Chair has the authority to resolve.

I thank all honourable Members who raised these important issues related to the Estimates process and all those who contributed to the discussion and assisted the Chair in the consideration of the matter. I certainly feel that while certain Members may indeed have a grievance in this area, it is not a question of privilege.

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1. *Debates*, February 22, 1990, pp. 8651-3.
 2. *Debates*, February 22, 1990, pp. 8693-4.
 3. *Debates*, February 22, 1990, pp. 8696-7.

FINANCIAL PROCEDURES

Supply

Designation of allotted days: notice required for non-deferrable votable opposition motion on a Friday; motion subject to embargo; calculation of number of votable motions

March 26, 1990

Debates, pp. 9758-61

Context: *On Thursday, March 22, 1990, the Chief Government Whip, Mr. Jim Hawkes (Calgary West), rose on a point of order to object to the request made by an opposition party that, pursuant to Standing Order 81(12)(b), a recorded division on an opposition motion standing in the name of Mr. Stan Hovdebo (Saskatoon—Humboldt), if demanded on a Friday, not be deferred. Mr. Hawkes argued that the Government had to designate Friday as an allotted day before the opposition could give notice of a non-deferrable votable opposition motion on that Friday. He added that the Government had not been given the required 48 hours' notice because of the total embargo that the Member had placed on the notice of this opposition motion and its votable status before its publication in the Notice Paper on March 22, 1990. Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) argued that under the special orders adopted by the House on April 4, 1989 and June 27, 1989,¹ the opposition had used up the total number of votable motions for the current supply period. Other Members intervened on the matter.² The Speaker took the matter under advisement. Later in the course of the sitting, he indicated that he would deliver a detailed decision in the near future but that in the interests of the House and to clear the way for the next day's order of business, he was obliged to declare Friday, March 23, and Monday, March 26, allotted days and to find that the opposition had met the requirements of the Standing Orders when it designated the division on Friday's motion as non-deferrable.³ On March 26, 1990, the Speaker returned to the House to deliver his decision which is reproduced in extenso below.*

DECISION OF THE CHAIR

Mr. Speaker: Last Thursday, March 22, the House heard extensive arguments brought forward by various Members relating to the complex and sometimes perplexing subject of supply, specifically the allotment of days for opposition motions, the notice required for these motions and the calculation of the number of these motions that can be votable.

Other questions raised touched not so much on our rules but rather on our general practice regarding the embargo of any motion by the Member who submits it to the Table or to the Journals Branch, whether that Member is from the Government or the opposition side.

I wish to thank all Members who made contributions to the debate on these points. Such discussions help us to clarify the meaning of our rules which can sometimes appear somewhat ambiguous.

Shortly after I heard Members' arguments, I stated to the House my decision that last Friday and today would be opposition days and that the opposition had fulfilled the requirements of the Standing Orders in designating a vote on Friday's motion to be non-deferrable. At the same time, I indicated my intention to return with a more detailed ruling. I am now prepared to offer Members my assessment of the contending points raised last Thursday.

In his presentation, the Government Whip maintained that two elements were required in order to have a non-deferrable votable opposition supply motion on a Friday. The obvious element was that the opposition had to give 48 hours' notice of its intention to demand such a vote.

Equally necessary he contended was the designation of an allotted day on a Friday by the Government before the opposition can give notice that a vote on a supply motion be non-deferrable.

With respect to the first element I certainly agree. The rules clearly spell out this requirement. Standing Order 81(12)(b) states:

If an opposition motion pursuant to section (14) of this Standing Order is to be proposed on a Friday, forty-eight hours' written notice shall be given that the recorded division on the motion, if demanded, is not to be deferred.

As I ruled on Friday last, it was my view that the opposition had fulfilled the requirements of the Standing Orders in relation to this, and could demand a vote on the Friday.

About the second element raised by the Chief Government Whip, the Chair has serious doubts that the Government has any direct role in determining when an opposition motion should be votable. The normal procedure is for the Government to designate the day as being an allotted day, and the opposition then decides what the motion to be debated on that day will be and decides also whether or not that motion is one that will come to a vote.

The Standing Orders list the number of allotted days there will be in each supply period and where the Government has failed to designate sufficient days to meet the requirements of the Standing Orders, by attrition those days left in the period must become allotted days, when no other alternative is possible in order to comply with the Standing Orders. That is what happened in this instance. When the House was discussing this matter on Thursday, only two sitting days remained in the period ending March 26, and two days remained in the total to be allotted to the opposition, hence Friday and today had to become opposition days, whether specifically designated by the Government or not.

The NDP, anticipating that Friday might be an allotted day, submitted a motion, on notice, on Wednesday before the 6 p.m. close of the *Notice Paper*, and indicated it wished such motion to be designated a votable motion. This was what subsequently transpired. Friday was an allotted day with an NDP motion debated and voted upon.

In normal circumstances, the Government, if it did not wish to vote on a Friday, could undesignate an allotted day and proceed to other business. That was not possible because the calendar ran out and Friday and today became automatically supply days.

In the arguments presented last Thursday, the Government Whip raised another interesting point, one that has to do with our embargo practices. The Government Whip stated that, as a consequence of the embargo placed on the notice of the opposition motion filed last Wednesday by the honourable Member for Saskatoon—Humboldt and on the votable status of that motion, the Government was deprived on the 48 hours' notice.

In light of the seriousness of this allegation, I think it is useful to review our long-standing practice with regard to embargoes. An embargo is a well-established practice which entitles anyone who is giving notice of a motion to instruct the Table to withhold explicit information about the content of a motion until the actual release of the parliamentary documents containing the notice, that is, the *Order Paper and Notice Paper* and the *Projected Order of Business* paper, documents normally available early the next morning. In the case of an opposition supply motion, the embargo can include information on whether the motion is votable or not. The embargo is placed exclusively at the request of the sponsor of the motion.

It is completely beyond the authority of the Table to determine whether the notice of a motion should be embargoed. Indeed, the Table makes every effort to follow any instructions given by a Member filing a motion. Whether information about a filed motion is to be made public immediately or at the hour when the filing of motions closes, this would be seven o'clock on Monday, five o'clock on Friday and six o'clock on other days of the week, or in a full embargo when the published parliamentary documents become available early the next morning, is entirely in the hands of the sponsoring Member. This is true, whether the Member is from the opposition or from the Government. As I have said, this is a practice of long standing and is adhered to scrupulously by the Table and the *Journals* office in all cases, for obvious reasons of fairness and impartiality. In view of this fact, I could not find that the complaint of the Government Whip was of sufficient merit to have forestalled or affected my decision of last Friday to allow the opposition their non-deferrable, votable motion.

That being said, however, the consequences which might arise from such a full embargo are serious and the House may wish to consider whether this practice should be modified. In the meantime, the Chair and the Table are bound to abide by the normal practice which I have just outlined.

Notices printed in the *Notice Paper*, which is attached to the *Order Paper*, are intended to give the Members prior knowledge of future matters to be raised in the House. Some matters require 24 hours' notice, others require 48 hours. If some Members feel that more notice is necessary than is provided in the Standing Orders, then I suggest the matter be raised in the proper committee. As the *Notice Paper* is published under the authority of the House, only the whole House could alter our rules and give the Speaker new direction.

The second part of last Thursday's discussion concerned issues raised by the Parliamentary Secretary to the Government House Leader with respect to the counting of allotted days and those that can be votable. Under normal circumstances, as the Standing Orders explain, the supply cycle is divided into three periods ending on December 10, March 26 and June 30. Within each period, a specified number of allotted days are assigned to the opposition. The total throughout the three periods is 25, of which a maximum of eight are to be designated votable and, of these, no more than four motions can be votable within any one period of the cycle.

A Special Order of last spring took into account the short session in the fall of 1988 and the commencement of the spring sitting only in April of 1989, which was later than usual. This Special Order provided a different arrangement for the allotment of supply days, and the number of them which would be votable. That Special Order extended into December, 1989, and took precedence over the Standing Orders and the usual calculation of the supply days for that period. I take the point of the Parliamentary Secretary that the supply cycle is normally calculated in the way he suggested, that is, that the period which ends December 10, is the first period of the cycle. Normally in the period ending December 10, Standing Order 81(8) stipulates that six days be allotted to supply of which a maximum of four could be votable. As it happened, the Special Order provided for 11 allotted days and of these, six came to a vote, two more than is usually permissible under the Standing Orders but which were allowed by the Special Order.

From this, I believe it is logical and fair to calculate from the period that ended December 10, the opposition would normally be allowed four motions to come to a vote and therefore has exercised its option fully by designating four votable supply motions. Therefore, within the two periods that remain in the supply cycle ending June 30, four more motions can come to a vote. As it has happened, the opposition in the period ending March 26 has designated four of the motions allotted to them as votable. In consequence, there remains no more

votable motions in the supply cycle which ends on June 30, 1990. As of today, the opposition will have used all of the eight votable motions available to them in the annual supply calendar.

I fully understand and appreciate how difficult the issue of supply can be. I also want the House to understand that my decision last Friday was not made lightly. The Chair is also very much aware of the consequences of a vote on Friday. My only guide however is fair play. The rules apply to both sides of the House in all circumstances. I want to thank the honourable Members who contributed to the discussions of these matters last week and I hope this ruling has clarified the circumstances that now pertain to the final supply period which begins tomorrow.

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1. *Debates*, April 4, 1989, pp. 10-1; June 27, 1989, pp. 3697-8.
 2. *Debates*, March 22, 1990, pp. 9613-24.
 3. *Debates*, March 22, 1990, pp. 9628-9.

FINANCIAL PROCEDURES

Supply

Designation of allotted days: filing of multiple notices of opposition motions from the same party; withdrawal of a notice of motion; selection of a motion by the Chair

December 7, 1989

Debates, pp. 6583-5

Context: On October 30, 1989, after the order was read for the consideration of an opposition motion standing in the name of the Rt. Hon. John Turner (Leader of the Opposition), Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) rose on a point of order regarding the notices of opposition motions process. He pointed out that an opposition motion was put on the Notice Paper even before a Supply day was designated by the Government. He also indicated that another opposition motion was added to the first one to be later withdrawn. Consequently, Mr. Cooper asked the Chair to rule on a number of procedural questions concerning the designation of allotted days, the filing of multiple notices of opposition motions from the same party, the withdrawal of a notice of motion and the Speaker's role in selecting a motion to be debated on an allotted day. Other Members also intervened on the matter.¹ The Acting Speaker (Hon. Steven Paproski) took the matter under advisement and the debate on Mr. Turner's motion began. The Speaker delivered a ruling on December 7, 1989. It is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On Monday, October 30, 1989, the Parliamentary Secretary to the Government House Leader raised as a point of order several questions regarding the conduct of business on a supply day.

The honourable Member for Kingston and the Islands (Mr. Peter Milliken) and several others offered comments on these questions. I want to thank Members for their contributions to this debate on an interesting procedural matter. I have considered the matter carefully and am now prepared to respond.

The first question asked by the Parliamentary Secretary was whether it was necessary for the government to designate a supply day before the opposition can give notice of a motion they want debated. The Parliamentary Secretary maintained that it was a necessary precondition. The honourable Member for Kingston and the Islands suggested that in this specific case it was not necessary and that, in any case, it had been done in anticipation of Friday being a votable supply day.

According to our rules and practice, the purpose of notice is to give warning to the House of an item of business that might be raised for debate. The notice does not necessarily mean that the item will actually be debated or that it will be debated any time soon.

The *Order Paper* contains numerous items for which notice has been given but which have not yet been debated. The Parliamentary Secretary suggested that proceedings on supply days are different.

While I agree that certain aspects of supply have a character distinct from other proceedings, it seems to me that unless the rules on supply are explicit, the usual practices should be followed. This is the case with notice.

It is competent for any opposition Member to file a motion that might be debated on a supply day. Normally what happens is that Members file supply day motions at the latest possible moment after a day has been designated by the Government, but this does not preclude the right to give notice of the supply motion well in advance of a supply day. Indeed this has happened.

In 1982 a supply day motion originally filed on February 11 remained on the *Notice Paper* for almost six weeks and through three supply days before being taken up on the final allotted day in the supply period ending late in March. While it may be unusual to have the supply day motion filed well in advance of a designated day, it is not prohibited by either our rules or our practice.

As his second point, the Parliamentary Secretary asked a question relating to the intent of Standing Order 81(12)(c), which gives the Speaker the power to select opposition motions on allotted days when notice has been given of more than one. He felt that the idea behind this Standing Order was to cover those situations where motions had been put on notice by both of the opposition parties, but that it was not the intention that one party could put down more than one notice or the same notice but in the name of another honourable Member.

The recognition of two opposition parties is not explicitly contemplated in the Standing Orders. Speakers in the past have indicated that they have selected motions with a view to the proportional balance of the opposition parties in the House, but this does not necessarily address the entire issue of selection.

Other considerations might need to be taken into account, particularly in instances where there are several notices, some of which could be submitted by Members of the same party. The date of the notice, the sponsor of the motion, the subject matter raised and whether the motion is votable or not can be weighed by the Speaker when making a final decision.

I would agree with the Parliamentary Secretary that the political parties are factored into any decision, but I would have to add that it is not the only criterion used nor is it necessarily the most important one and, as I have stated earlier, there is nothing in the Standing Orders which in any way limits the number of notices which may be given.

The third question of the Parliamentary Secretary has to do with the withdrawal of a notice of motion. The Parliamentary Secretary asks if it is in order “for any or all notices for such motions to be withdrawn without the consent of the House.” The simple answer to this question is yes. As long as a motion has not been proposed to the House, as long as the House is not properly seized of the motion, then it is still only a notice and it remains possible for the sponsor to secure its withdrawal unilaterally. The sponsor of the notice of motion could even refuse to move it when the order is called and it would be dropped. Once it is in the possession of the House, however, the motion becomes the property of the House and it is the House which must then consent to the motion being withdrawn from further consideration or possible decision.

The authorities are clear on this. *Beauchesne*, *Bourinot* and *May* all confirm that Members retain the right to withdraw notices of motions before they have been proposed to the House. See, for example, *Beauchesne* Fifth Edition, Citation 398 on page 144 and *Bourinot* Fourth Edition, page 296 where one reads:

A notice of motion may be withdrawn at any time by the Member upon merely notifying the Clerk of the House of his desire so to do, [...]

British practices are comparable to our own with respect to withdrawal of notice, and I would refer Members to pages 353 and 377 of *May* Twentieth Edition: “Notice withdrawals are usually done by a letter to the Clerk signed by the Member concerned.”

In the fourth issue raised by the Parliamentary Secretary I am asked to deal with the power of selection as set out in Standing Order 81(12)(c). In the 20 years that this rule has been part of our Standing Orders the Chair has only occasionally been obliged to select motions for debate on a supply day.

The task is perhaps not as daunting as the Parliamentary Secretary suggests. It is not so much impossible as unenviable. As I pointed out earlier, there are certain criteria which the Speaker uses in evaluating the supply day motion when more than one has been filed.

Speakers in the past have tried to announce to the House as soon as they are able what motion will be selected for the supply day, but this may not always be satisfactory given that notices can be filed up to the very last minute, that is, up to six o'clock in the evening prior to a supply day or five o'clock on a Friday, thus leaving little time for Members to prepare for a debate.

While the Speaker can be sympathetic to the pressures exerted on Members who routinely have to come into the House with speeches on short notice, there is little that the Chair can do except to enforce the rules as they are written and as they have been applied for two decades since the rules of supply have been changed.

I hope that this explanation of the rules relating to opposition day motions and notice has been helpful to the Parliamentary Secretary and to the House and I thank the Member for giving me the opportunity to clarify the matter.

1. *Debates*, October 30, 1989, pp. 5268-9, 5302-4.

FINANCIAL PROCEDURES

Supply

Amendment to the Standing Orders: reduction in the number of allotted days in proportion to the number of sitting days

April 9, 1991

Debates, pp. 19233-7

Context: On March 26, 1991, prior to the reading of the motion to amend the Standing Orders of the House of Commons, Mr. Nelson Riis (Kamloops) rose on a point of order to ask the Chair to rule that the motion before the House was wholly or partially out of order. The Speaker interrupted the Member to advise him that he would hear his point of order after the motion had been read.¹ Later in the course of the sitting, Mr. Riis rose on a point of order to allege that paragraph 30 of the motion, providing for a reduction in the number of allotted days in proportion to the number of sitting days on which the House did not sit, infringed upon the rights of the House over Supply. He argued that the amendment sought to erode the historic authority of the House and the rights of its Members, and exceeded the limits imposed by the Constitution, the Parliament of Canada Act and the power of the House to regulate its internal affairs. He added that the adoption of these proposals would constitute a de facto amendment to the limiting statutes and thus amounted to an attempt to bring about statutory and constitutional change by means of a simple motion. The Hon. Harvie Andre (Minister of State and Government House Leader) also spoke on the matter.² The Speaker indicated that he would hear further argument at an appropriate time.

On April 8, 1991, during Government Orders, Mr. Riis asked the Chair to indicate when it would be prepared to respond to the argument put forward on March 26 as to the admissibility of the proposed amendments to the Standing Orders. The Deputy Speaker (Hon. Andrée Champagne) assured Mr. Riis that a response would be forthcoming as soon as possible.³ On April 9, 1991, the Speaker delivered his decision. This ruling also dealt with another matter raised by Mr. Riis. More specifically, it concerned the introduction of new Standing Order 56.1 regarding refusal of unanimous consent.⁴ The sections concerning the reduction in the number of allotted days are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: On Tuesday, March 26, 1991, when Government Motion No. 30 to amend the Standing Orders was first before the House, the honourable Member for Kamloops rose on a point of order to ask the Chair to rule that certain aspects of that motion were “in whole or in part improperly before the House” and “in whole or in part out of order.” [...]

The honourable Member sought to establish four points which he set out as follows:

First, that these provisions seek to erode the historic authority of the House and the rights of its Members and are thus contemptuous of the House as they will tend to diminish its dignity and impede Members in the discharge of their functions.

Second, these proposals exceed those limits imposed by the Constitution and by statute and the power of the House to regulate its internal affairs.

Third, adoption of these proposals would be a *de facto* amendment to those limiting statutes and are thus an attempt to achieve by simple motion changes which should both be statutory and constitutional.

and,

Fourth,—our traditions and practice require that they be found out of order.

The honourable Member's second and third points involving as they do a definition of the limits of the Constitution and other statutes have given the Chair some pause. The honourable Member argues that acceptance of the proposals at issue would make a *de facto* change to the *Parliament of Canada Act* and to the *Constitution Act* by amending our privileges by means of simple Standing Order changes.

In his ingenious argument the honourable Member likens this to changing statute by means of an appropriation act and based on the Chair's own recent decision prohibiting such a practice, invites the Chair to make a similar ruling in this instance.

The problem with that is that, were the Chair to agree to the honourable Member's request, the Speaker would then be placed in the situation of having to interpret the Constitution and the *Parliament of Canada Act*. There are many precedents showing that the Chair should not venture into such an area.

As my predecessors have so often reminded the House, the Speaker has no role in interpreting matters of either a constitutional or legal nature. On May 2, 1989, I had occasion to refer honourable Members to Citations 117(6) and 240 of *Beauchesne* Fifth Edition and to a decision of Mr. Speaker Lamoureux of July 8, 1969. At that time I explained:

The reasons for these citations are straightforward. The Speaker should not sit in judgment on constitutional or legal matters. That role belongs more properly to the courts and the administration of justice. Previous Speakers have been very careful in strictly addressing themselves to matters of a parliamentary or procedural nature while avoiding dealing with constitutional or legal matters.⁵

Again, on February 7, 1990, as recorded at page 7954 of *Debates* when the honourable Member for Kamloops had presented a detailed, intriguing argument, in fact, one not dissimilar to the present argument, to the effect that closure contravenes the Constitution of the country, I said:

[...] I am not prepared again to rule on it because if I did I would be straying into an area in which I am not allowed to go. He states that our rule in the House contravenes our Constitution. That may or may not be, but the authorities for many, many years back make it quite clear that I cannot rule on a legal or a constitutional issue.

Likewise, the Chair must avoid interpreting in any way, even indirectly, the limits set in the Constitution or the *Parliament of Canada Act*. It must be noted however that the constitutional limits relating to our quorum and the need to get a Royal Recommendation in relation to any appropriation bill also appear in the Standing Orders of the House, being procedural matters of course.

Accordingly, I would set aside the second and third points advanced by the honourable Member for Kamloops. I hasten to add, however, that these arguments have not been dismissed lightly, nor is their disposition fatal to the honourable Member's case for there is ample substance still to be considered in respect of the remaining two points he formulated.

The honourable Member argues that the provisions in paragraphs 20 and 30 "seek to erode the historic authority of the House and the rights of its Members and are thus contemptuous of the House as they will tend to diminish its dignity and impede Members in the discharge of their functions." This aspect of the issue involving as it does both privilege and contempt is clearly an area into which the Chair not only may, but must, venture.

The honourable Member for Kamloops takes objection to that part of paragraph 30 of the motion which proposes that:

—if the House does not sit on days designated as sitting days pursuant to Standing Order 28, the total number of allotted days in that supply period shall be reduced by a number of days proportionate to the number of sitting days on which the House stood adjourned—

The honourable Member is quite clear in distinguishing between those aspects of the proposal which reduce the number of supply days in an ordinary session from 25 to 20 and the proposal to reduce the number of allotted days in proportion to the number of sitting days. The former, he quite properly recognizes as quantitative change which is not a procedural concern; the latter is, he submits, a qualitative change to the rights of the House over supply. As the Chair understands the honourable Member's argument it is that in tying the number of supply days to the number of sitting days, the proposal ruptures the linkage between allotted days and the granting of supply and consequently infringes upon Members' historic right to air grievances and petition the Crown

before supply is granted. The honourable Member supports his claim that the proposed new Standing Orders might lead to the government claiming supply without hearing grievances or resort to a hypothetical example.

Although the Chair has no intention of dealing with hypothetical matters—that is not the role of the Speaker—and should not lay the rules governing House proceedings, the Chair does take seriously any claim that the fundamental rights of this House have been or could be misrepresented. So, the Chair has examined the proposal in question and its potential effect on the supply process.

The purpose of our existing Standing Order 81(8) is to establish for any calendar year three supply periods ending December 10, March 26 and June 30 in which different aspects of the business of supply are considered. In the proposed amendment, Standing Order 81(8)(a), this purpose remains unchanged, but the date of the June supply period is altered to June 23. The number of allotted days is reduced from 25 to 20, proportionately, within each period. Proposed new sections 8(b) and 8(c) are also added to the Standing Order. Section 8(b) introduces the concept that should the House not sit on days designated as sitting days in the Standing Orders, then the total number of allotted days in that supply period would be reduced proportionately. New Section 8(c) provides that should the House sit more than the prescribed number of days, extra allotted days would be added, again proportionately.

Viewed in context, it is very difficult to see these changes as any more than an adjustment to the supply process. Arguably, rather than divorcing the allotted days from the supply period, the proposed changes might make them a more integral part of that process by adding a condition which makes them more responsive to the actual process. In the past, when the House did not sit for extended periods during a supply cycle, as, for example, when a new session of Parliament opened in the middle of a supply period, adjustments to the number of allotted days were subject to negotiation and were usually achieved through special orders of the House. Such Special Orders were passed in 1971, 1974, 1980 and 1989.

It seems that the proposed changes, by establishing a set formula to determine how such adjustments are to be made, would add an element of certainty in what has been, admittedly, an *ad hoc* process.

In this way it appears to the Chair that rather than detracting from the right of Members to air grievances before supply, it might be argued that the proposed changes secure that right. [...]

The Chair commends the honourable Member for Kamloops for bringing his concerns to the attention of the House and for the cogency and seriousness of his argument. The Chair does not take lightly any decision respecting the privileges of this Chamber or of an individual Member of it. It is only by constant

vigilance that we can ensure the preservation of the privileges necessary to the carrying out of our responsibilities as elected representatives. In Citation 21 of *Beauchesne* Fifth Edition, it is stated:

The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them.

In coming to a decision on the point of order raised by the honourable Member for Kamloops, the Chair was very much aware that this House is about to embark upon an exercise of that fundamental privilege. In the view of the Chair, it would be incongruent to deprive this Chamber, by fiat from the Chair under the guise of protecting privilege, of the opportunity to fully explore the options available to the House in the exercise of its most basic privilege. The privilege which this House enjoys to set its own binding rules of procedure and to regulate its own internal affairs must be guarded just as jealously as the rights, immunities and privileges of individual Members of the House of Commons. When the two are in conflict, or apparent conflict, it should be the House and the Members thereof who resolve the difference.

Traditionally the House has accommodated concerns about the text of its current and proposed Standing Orders through the process of debate, amendment and clarification through agreement. Furthermore, the House and all honourable Members may seek to clarify, to modify and to interpret House rules and practices by recourse to points of order, questions of privilege and to the committee charged with the review of and report on the Standing Orders and procedures in the House and its committees.

So seriously does the House view its duty to review and to evaluate, to establish and revise its Standing Orders, that it has even designated by Standing Order 51 that they shall be automatically reviewed and debated at the beginning of the first session of every Parliament.

While the honourable Member does not have a point of order, he will have several future opportunities to propose changes to the Standing Orders.

Again, I emphasize that the argument raised by the honourable Member for Kamloops was obviously very carefully considered. The matters are important matters and I hope that he will be able to accept the basis of this ruling, which is that ultimately it is the House that must make up its mind as to the orders by which we are governed.

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1. *Debates*, March 26, 1991, p. 19025.
 2. *Debates*, March 26, 1991, pp. 19042-6.
 3. *Debates*, April 8, 1991, pp. 19132-3.
 4. This question is considered in the chapter on "The Decision-Making Process".
 5. *Debates*, May 2, 1989, p. 1179.

FINANCIAL PROCEDURES

Supply

Allotted day: adjournment of the House prior to the consideration of the business of Supply

December 4, 1986

Debates, pp. 1811-2

Context: On December 4, 1986, Mr. Nelson Riis (Kamloops—Shuswap) rose on a point of order to oppose the Government's insistence that the sitting of December 3 had been an opposition day, despite the fact that the House had adjourned at 6:00 p.m. before reaching Orders of the Day and, more precisely, the opposition motion. Mr. Riis argued that no opposition day had occurred and that there were two allotted days left in the Supply period. Other Members intervened on the matter.¹ The Speaker reserved his decision until later in the sitting. It is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: This morning the Chair heard a point of order regarding the status of the allotted days for the current supply period, and the effect of yesterday's proceedings on the supply motion that was to be debated and voted on yesterday.

The House will remember that at 3 p.m. yesterday the Chair heard comments at length on an alleged question of privilege before taking the matter under advisement. Accordingly, Routine Proceedings were delayed and the House was still considering Routine Proceedings when it adjourned at six p.m. I will go through the details of that in a moment.

I have reviewed the precedent referred to by the honourable Parliamentary Secretary to the Deputy Prime Minister (Mr. Doug Lewis). The events in that precedent were as follows. First, on Wednesday, June 6, 1972, the sixth and seventh allotted days for that period were designated to occur on Thursday, June 8, 1972, and Friday, June 9, 1972. Second, the *Notice Paper* shows a notice of motion of supply for Thursday, June 8, 1972. Third, on June 8, 1972, the House began Routine Proceedings and debate ensued on a motion under the then Standing Order 43. Fourth, at 10 o'clock p.m., when the House adjourned it was still considering the motion under Routine Proceedings. The order for supply was not reached or called on June 8, 1972. Fifth, the *Order Paper* for June 9, 1972, shows under the continuing order of supply: "the sixth allotted day" with the same motion on the *Notice Paper* and an additional motion.

At this point it is important to note that since the order for supply was not reached on June 8, it reappeared still as the sixth allotted day on Friday, June 9, 1972. It was not a lost allotted day because the order had not been called.

The sequence of events yesterday was as follows: When Question Period ended, there was an alleged question of privilege. Debate on this lasted from three o'clock to 4:30 p.m. This was followed by a statement by the honourable Minister of Employment and Immigration (Hon. Benoît Bouchard) which, including replies, lasted 10 minutes. The House then moved under Routine Proceedings to petitions. There were petitions presented. During the presentation of petitions, the honourable Member for Kamloops—Shuswap moved: "That the House do now proceed to Orders of the Day." That occurred at about 5 p.m.

As honourable Members know, if this motion had passed the House would have gone to Orders of the Day and the opposition motion would have been called at about 20 minutes to 6, which is the time the vote on the motion of the honourable Member for Kamloops—Shuswap was completed. At that point the allotted day would have commenced. However, the motion to proceed to Orders of the Day was defeated and the House continued with Routine Proceedings which were then at the petition stage.

The honourable Member for Churchill (Mr. Rod Murphy) rose, presented a petition, and moved: "That the House do now proceed to Introduction of Bills". That motion is non-debatable. A division was called for. Before the vote could take place, the ordinary time of daily adjournment was reached and the Deputy Speaker lapsed the motion. I am not ruling on that aspect at this time. It was raised and I will return to the Chamber to discuss that.

However, I repeat that before the vote could take place the ordinary time of daily adjournment was reached and the Deputy Speaker lapsed the motion. The day was then done. In the words of the old hymn: "The day thou gavest Lord, had ended." Consequently, I must rule that the allotted day was never in fact commenced and, therefore, two allotted days remain in the current period.

The Chair wants honourable Members to understand that it is not for the Chair to comment on how or on whose motions the day ended as it did, only that it did end without the allotted day having commenced.

1. *Debates*, December 4, 1986, pp. 1761-3.

FINANCIAL PROCEDURES

Supply

Opposition motion: order binding on the Government; amendment exceeding the scope of the motion

June 8, 1989

Debates, p. 2811

Context: On June 8, 1989, after the order was read for the consideration of an opposition motion standing in the name of Ms. Lynn Hunter (Saanich—Gulf Islands), the Hon. Jean Charest (Minister of State (Youth), Minister of State (Fitness and Amateur Sport) and Deputy Government House Leader) rose on a point of order to allege that the motion was procedurally unsound in that it might, *ipso facto*, become an order binding on the Government to introduce legislation on the environmental assessment process, table a policy on safe disposal of hazardous wastes, or take other action of this kind. Other Members also intervened on the matter.¹ The Deputy Speaker (Mr. Marcel Danis) took the matter under advisement and recognized Ms. Hunter to lead off the debate. Later in the course of the sitting, the Hon. Charles Caccia (Davenport) moved an amendment to the opposition motion to the effect that every Government department and agency be required to review its policies, programs, projects and budgets to determine their contribution to sustainable development and that the Government be required to table a strategy to reduce carbon dioxide emissions by at least 20 per cent by the year 2005 and to amend the Canadian Environmental Protection Act. The Deputy Speaker took the amendment under advisement.² Around 5:10 p.m., the same day, the Deputy Speaker delivered his decision as to the admissibility of the amendment and of the main motion. It is reproduced *in extenso* below.

DECISION OF THE CHAIR

The Deputy Speaker (Mr. Danis): The honourable Member for Davenport proposed to move an amendment to the motion on the environment which we have been debating throughout the day. I am now prepared to rule on the acceptability of the proposed amendment.

An examination of the wording of the proposed amendment suggests to the Chair that the honourable Member is attempting to expand and add to the proposition envisaged in the original motion.

If I may remind honourable Members of *Beauchesne* Citation 437(2),³ it is not in order by means of an amendment to raise new questions which should be considered as distinct motions moved after proper notice. With regret, I must therefore rule the proposed amendment of the honourable Member for Davenport out of order.

Now to the second ruling. Earlier today, the Deputy Leader of the Government in the House rose to object to the wording of the opposition motion under discussion today on the grounds that a motion which might, if agreed to, become an order binding on the Government, was out of order.

After deliberation, I am ready to rule on the point of order.

Beauchesne Fifth Edition at Citation 412 says:

[...] By its orders the House directs its committees, its members, its officers, the order of its own proceedings and the acts of all persons they concern;—

It appears to the Chair that there are instances in which the House, in directing “the order of its own proceedings”, also gives orders to the Government. Such instances are found in Standing Order 36(8), which directs the Ministry to answer petitions; Standing Order 111(4), which directs a Minister’s office to produce documents; and Standing Order 123(1), which specifies that a committee report on delegated legislation, when concurred in, becomes an Order of the House to the Ministry.

The Chair notes that the relevant parts of the motion proposed today involve the introduction of a bill and the tabling of documents, processes which are, at least arguably, parts of the procedure of the House in the same way as the examples cited above. Furthermore, both Speaker Lamoureux, on March 6, 1973 and Speaker Jerome, on November 14, 1975, have expressed strong reluctance to interfere with the freedom of the opposition to choose the motion to be debated on an allotted day.⁴

For these reasons, I am also reluctant to infringe this freedom, except in the clearest cases of irregularity. I therefore find that this particular motion is in order.

Before closing, however, I wish to advise the House that this decision should not be taken as a precedent by which any opposition motion could order or instruct the Government on a particular course of action. The Chair will continue to examine each motion before the House with close attention as to its form and content, and will not hesitate to rule against any motion that it finds irregular.

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1. *Debates*, June 8, 1989, pp. 2756-9.
 2. *Debates*, June 8, 1989, p. 2804.
 3. *Beauchesne* Fifth Edition, p. 155.
 4. *Debates*, March 6, 1973, pp. 1944-5; November 14, 1975, p. 9072.

FINANCIAL PROCEDURES

Supply

Opposition motion: amendment exceeding the scope of the motion

March 26, 1992

Debates, pp. 8876-7

Context: On March 26, 1992, during the consideration of an opposition motion standing in the name of Mr. Jim Karpoff (Surrey North) that expressed the concern of the House about threats to Canada's health care system inherent in the avowed intention of certain Liberal premiers to abandon the principle of universality and to charge user fees, Mr. Rey Pagtakhan (Winnipeg North) moved an amendment to the effect that the health care system was also threatened by measures taken by certain New Democratic premiers to close health care centres and reduce the services offered at others, as a direct result of the federal Government's withdrawal from its support to Canada's health care system. The Deputy Speaker (Hon. Andrée Champagne) took the amendment under advisement.¹ Shortly thereafter, she indicated to the House that the amendment posed procedural difficulties and that she would hear argument after the period for questions and comments following the remarks by Mr. Bill Blaikie (Winnipeg Transcona).² When the occasion occurred, Ms. Diane Marleau (Sudbury) argued that the main motion introduced the idea of incumbent governments and that the amendment simply clarified the nature of the threat referred to in the motion. Other Members also intervened on the matter. The Deputy Speaker asked the indulgence of the House to study the new arguments.³ The debate continued. Before suspending the sitting for the mid-day interruption, the Deputy Speaker informed the House that she would consult the Speaker and that a decision would be delivered following Question Period.⁴ Immediately following the weekly statement of business, Mr. David Dingwall (Cape Breton—East Richmond) rose on a point of order to state that if the amendment were deemed to exceed the scope of Standing Order 81(11) because it did not deal with a matter falling under the jurisdiction of the federal Government, then the Chair would also have to find the main motion inadmissible. Other Members took part in the discussion.⁵ The Speaker left the chair to consider the matter. On his return, he delivered his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: As honourable Members know, shortly after Question Period there was a further extension of a point of order which had been brought this morning relating to the amendment by the Official Opposition to the motion which has been proposed in this allotted day by the New Democratic Party. As I say, there was argument this morning and further argument this afternoon. I, of course, am indebted to all honourable Members for their contribution. By the way, I have read back through the arguments that were made this morning.

The Chair has considered the arguments that were raised earlier today by honourable Members on the proposed amendment by the honourable Member for Winnipeg North. As stated in *Erskine May* 21st Edition, page 339:

The effect of moving an amendment is to restrict the field of debate which would otherwise be open on a question.

I am going to repeat that:

The effect of moving an amendment is to restrict the field of debate which would otherwise be open on a question.

The honourable Member for Sudbury pointed out that the intention of the amendment was to expand the scope of the debate, and although it may be a laudable objective, unfortunately it is, in my view, out of order procedurally.

Other Members, including the Members for Winnipeg Transcona and Winnipeg North, mentioned a new proposition being introduced or made reference to Citation 929 of *Beauchesne* Sixth Edition. The Chair feels the amendment must not provide the basis for a different debate.

Furthermore, as explained in the Chair's ruling of March 16, 1971, when the opposition parties agree on the choice of subject for an allotted day, and I am quoting Speaker Lamoureux: [...] "the spirit of fair play would require that the day [should] not be taken away by means of an amendment".⁶

The Standing Order requiring notice would be pointless if, after notice had been given, the motion were amended to make possible the consideration of an entirely new facet of the question.

There was further argument given of course this afternoon and I certainly listened to it, but I do not think I need to make further comment than what I have done. As a consequence, for these reasons I will have to rule the amendment out of order. That of course does not preclude another amendment being moved.

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1. *Debates*, March 26, 1992, pp. 8826 and 8835.
 2. *Debates*, March 26, 1992, p. 8845.
 3. *Debates*, March 26, 1992, pp. 8847-8.
 4. *Debates*, March 26, 1992, p. 8854.
 5. *Debates*, March 26, 1992, pp. 8869-71.
 6. *Debates*, March 16, 1971, p. 4306.

FINANCIAL PROCEDURES

Ways and Means

Budget: budget leak; attempt to withdraw unanimous consent previously given for the Minister of Finance's budget presentation; budget secrecy; questions of privilege raised

April 27, 1989

Debates, pp. 1059-60

Context: *On April 19, 1989, an Order of the House was adopted by unanimous consent for consideration of Ways and Means Proceedings No. 1, for the purpose of the budget statement of the Minister of Finance (Hon. Michael Wilson), at 5:00 o'clock p.m. on Thursday, April 27, 1989.¹ On April 26, 1989, the day before Mr. Wilson was to present his budget statement in the House of Commons, a printed document entitled The Budget in Brief and certain details of the Budget were disclosed during an evening television news broadcast.*

On April 27, 1989, Mr. Wilson rose on a question of privilege to explain to the House the circumstances surrounding the leak of the Budget the previous day. He stated that "the premature release of details of the Budget appears to have resulted from a breach of trust, a wilful criminal act against which there is no certain security." Mindful of the importance of not permitting any individual from profiting or gaining advantage from advance knowledge of the content of the Budget, the Government had decided that the most prudent course of action was to make the Budget public immediately at a press conference, the evening of April 26, 1989. Mr. Wilson further explained that presenting the Budget outside the House could have been avoided if the opposition parties had consented to the Government asking the Speaker to call a special sitting of the House.²

The Rt. Hon. John Turner (Leader of the Opposition) then rose on a question of privilege to say that the Finance Minister's decision to reveal the Budget outside the House constituted a violation of a fundamental principle of parliamentary democracy, namely that financial measures must be initiated in the House of Commons. He argued that this was the most serious violation of budget secrecy that had ever occurred and that consequently, Mr. Wilson should resign and the Budget be declared null and void. As for the claim that the opposition had refused to co-operate, Mr. Turner asserted that under Standing Order 28(3), the Government could have asked the Speaker to call a special sitting of the House.³ Other Members also rose on questions of privilege which were debated throughout the day.⁴

At five o'clock p.m. the Speaker intervened in the debate and stated that he was bound by the Special Order adopted by the House on April 19, 1989, to proceed forthwith with the consideration of Ways and Means Proceedings No. 1, for the purpose of hearing the budget statement of the Minister of Finance. Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order after the reading of the Special Order to inform the House that the Official Opposition was withdrawing its consent to

the motion adopted April 19, 1989, as then did Mr. Nelson Riis (Kamloops) on behalf of the New Democratic Party. The Speaker suspended the sitting temporarily to look into this exceptional situation.⁵ Upon his return, he delivered his decision which is reproduced in extenso below. This decision deals specifically with the question of unanimous consent. (Note: On May 1, 1989, debate resumed on the series of questions of privilege.⁶)

DECISION OF THE CHAIR

Mr. Speaker: On April 19, 1989, an Order was made by this House. It was a unanimous order as a consequence of discussions as so often happens here between Leaders of all three Parties. That Order—I am citing this so that honourable Members and the public will clearly understand what is taking place—related to the presentation of a Budget. The agreement entered into prior to the Order being presented to the House and the unanimous consent that was given to the Order when it was presented to the House were clearly based on the expectation that the Minister of Finance would rise today and present his Budget. I read the Order:

That, notwithstanding any Standing or Special Order of this House, at 5:00 o'clock p.m. on Thursday, April 27, 1989, the Speaker shall interrupt any proceedings then before the House and proceed forthwith to the consideration of Ways and Means Proceedings No. 1, for the purpose of hearing the budget statement of the Minister of Finance;

That, immediately following such budget statement, the House shall revert to the Routine Proceedings "Introduction of Government Bills" and, following introduction and first reading of a bill or bills, the Speaker shall recognize a Member of the Official Opposition in debate on Ways and Means Proceedings No. 1; and

That would mean in the usual course a representative of the Official Opposition would speak and, if that took place, would have unlimited time. It continues:

That the House shall not adjourn until the adjournment of the debate on Ways and Means Proceedings No. 1, following which the Speaker shall adjourn the House until the next sitting day.

And by unanimous consent it was ordered:

That, on Friday, April 28, 1989, the House shall meet at 11 o'clock a.m. with Statements by Members pursuant to Standing Order 31 at that time, Oral Questions at 11:15 o'clock a.m., until 12 o'clock noon, followed by the Daily Routine of Business;

That, immediately upon the completion of the Daily Routine of Business, the House shall proceed to Government Orders, Ways and Means Proceedings No. 1 (the Budget motion);

That, during the debate on the Budget motion, on that day, there shall be one speaker for the Official Opposition followed by one speaker for the New Democratic Party and, that both speakers will be allowed whatever time is necessary to complete their speeches; and

That, immediately upon completion of the speech by the New Democratic Party speaker, but in any event not later than 3:30 o'clock p.m., the Speaker shall adjourn the House until Monday, May 1, 1989, at 11 o'clock a.m.

That is the Order which was entered into by consent.

Several things have happened in the last 24 hours as honourable Members and the public know and as a consequence the Government decided that the Minister of Finance had to proceed with the presentation of the Budget by way of a press conference yesterday evening rather than wait until today and present the Budget by way of the Special Order.

It is not for me to argue about these events except to record, as honourable Members and the public are aware, that the Official Opposition and the New Democratic Party have argued this afternoon that it is not appropriate to proceed under this Order even though consent was given before because circumstances have changed.

Both the Official Opposition and the New Democratic Party have taken the unusual step of advising the House that under the circumstances they withdraw their consent. By that I take it to mean that they no longer feel that they ought to agree that the House should proceed under the provisions of the Special Order.

I am quick to point out that there are negotiations that take place here all the time and sometimes when agreement seems to have been reached, but prior to it having taken effect on the floor of the House, circumstances may change.

Sometimes what may have seemed to have been consent earlier is not followed through because of changed circumstances.

The difficulty the Speaker is in, in this present situation, is that while fully understanding the position of the Official Opposition and the New Democratic Party and fully understanding the reason for it, the fact of the matter is that we now have a House Order, which was passed by the House. I can see no way that I can unilaterally change that.

This House Order could be changed, of course, if the House wishes to direct me in that way, but I have not received such a direction. I am bound to follow it unless, of course, I am directed otherwise. As I say, the House has not done so.

There was another argument advanced, that is, that the Budget ought not to go ahead until the argument over privilege—because there are a number of privilege applications all being heard in one debate—is completed.

I am continuing to hear argument on what may or may not be a contempt of this House. I do not prejudge that. While the matter to be heard under this special House Order that I have described, and the questions of contempt and privilege are related questions, I have looked at them carefully and it is my view that they are not dependent one upon the other. Each stands alone as a unique proceeding.

The Speaker cannot foresee the future, that is, what the House may eventually do if there is a *prima facie* case of contempt or privilege. As I said, I intend to hear further argument on the privilege matter. It is not closed off this afternoon by any means.

However, while I do not know what may eventually happen on the privilege issue, I do know what the House has done with the special House Order. I must advise honourable Members that I am bound by it. Therefore, it is my duty to recognize the honourable Minister of Finance.

Postscript: *On May 1, 1989, following comments made by Mr. Nelson Riis, the Hon. Herb Gray (Windsor West) and the Hon. Doug Lewis (Minister of Justice and Attorney General of Canada), the Speaker agreed to stand down the debate on the questions of privilege arising from the Budget leak until hearing from the House Leaders. These issues were never fully addressed in the House again.*

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1. *Debates*, April 19, 1989, pp. 690-1.
 2. *Debates*, April 27, 1989, pp. 1004-5.
 3. *Debates*, April 27, 1989, pp. 1005-10.
 4. *Debates*, April 27, 1989, pp. 1010-23, 1036-57.
 5. *Debates*, April 27, 1989, pp. 1057-9.
 6. *Debates*, May 1, 1989, pp. 1107-10. See Postscript above.

FINANCIAL PROCEDURES

Ways and Means

Fiscal matters: tax reform consultants' access to information; budget secrecy; budgetary implications

June 18, 1987

Debates, pp. 7315-6

Context: On June 17, 1987, the Rt. Hon. John Turner (Leader of the Opposition) rose on a question of privilege to object to the fact that certain individuals had had access to the final version of the White Paper on Tax Reform before it was tabled in the House. Partly on the basis of an article that had appeared that morning in The Globe and Mail, Mr. Turner argued that the 20 experts hired by the Minister of Finance (Hon. Michael Wilson) to review the White Paper's technical provisions could take unfair advantage of their privileged situation among accountants and tax consultants. He further asserted that the Government had given the Minister's statement the status of a budget presentation by placing on the Order Paper notice of a Special Order providing for the tabling of notices of Ways and Means motions following the statement,¹ and that in consequence, the whole matter ought to be viewed in the context of budget secrecy. Other Members also intervened on the matter.² The Speaker reserved and returned to the House on June 18, 1987 to deliver his decision which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: I am now prepared to rule on the question of privilege raised yesterday by the Rt. Hon. Leader of the Opposition concerning the principle of secrecy as it relates to fiscal matters. Yesterday I allowed extensive argument on this matter because I recognized that it was one of overriding importance. Because it affects a major fiscal issue which is to be brought before the House later today, I have decided that I should not delay my ruling.

The question of privilege of the Rt. Hon. Leader of the Opposition was based to some extent on a report in yesterday's *Globe and Mail*. The Right Hon. gentleman supplied the Chair with a copy of that report, and I have read it very carefully. There is no doubt that the report gives the impression that the 20 experts engaged by the honourable Minister of Finance to study the final text of his White Paper are a privileged group who will be able to provide advice to their clients with the benefit of advantages that others working in their field will not have.

The facts, as I understand them, and which are not disputed, are as follows. Twenty experts have been engaged by the honourable Minister of Finance to give technical advice on the White Paper which is to be presented to this House tonight. They have been involved in the process for a matter of months but have been given a preview of the final text, or parts of the final text, of the White Paper prior to its

tabling in the House this evening. These 20 people have all been sworn to secrecy and have taken the same oath as that administered to members of the Public Service.

The complaint of the Rt. Hon. Leader of the Opposition, which was supported by a number of honourable Members who participated in the discussion, is that these 20 individuals have been given a special privilege of which they could take advantage. I emphasize the word "could", the conditional tense, because it was not suggested by any honourable Member that any of these people had in fact breached their oaths of secrecy or were likely to do so. The integrity of these individuals is not in question, and honourable Members will remember that I intervened several times during the discussion to establish this point. I want it to be clearly understood.

The question of privilege is based exclusively on the suggestion that the privileges of honourable Members of this House have been breached because 20 individuals have been given access to the final text of the White Paper before it has been made available to Members of the House. The honourable Minister of Finance made the point that the White Paper was not a Budget, that it is nothing more than a proposal and that it does not even represent budgetary policy. While I appreciate the distinction, I feel that the White Paper nevertheless has very important budgetary implications.

The honourable Minister of Finance also made the point that there was nothing new in the Government hiring experts to advise it on budgetary matters. The Rt. Hon. Leader of the Opposition and those who supported him saw a distinction between the hiring of experts during the formulation process and giving those same experts access to a final document before its presentation to the House.

I have examined the precedents available and have come to the following conclusions. Budgetary secrecy is a matter of parliamentary convention. Its purpose is to prevent anybody from gaining a private advantage by reason of obtaining advance budgetary information. The Right Hon. Leader of the Opposition referred to two British cases which involved the resignations of Ministers, in one case a Chancellor of the Exchequer because of a budget leak. However, the issues were never raised as matters of parliamentary privilege.

In this House, issues of this nature have in the past been raised as questions of privilege. The honourable Parliamentary Secretary to the President of the Privy Council (Mr. Doug Lewis) referred to two such cases. In a ruling relating to one of them given on April 17, 1978, Mr. Speaker Jerome expressed serious doubts as to whether the convention of budgetary secrecy fell within the area of privilege at all.³ I must inform the House that in these circumstances I have arrived at the same conclusion.

I do not believe that this issue was one of privilege because honourable Members of this House, and this is very important when one considers what is privilege, have not in any way been obstructed in the fulfilment of their duties by the fact that these 20 experts were given a preview of the White Paper. I must emphasize, however, that I am not ruling on the issue of propriety. The limits of parliamentary privilege are very narrow and it is not a responsibility of the Chair to rule as to whether or not a parliamentary convention is justified or whether or not the matter complained of is a breach of that convention. That is a matter of political debate and not one in which the Chair would wish to become involved.

I draw to honourable Members notice of the fact that during argument yesterday, honourable Members rose to say that they were not rising against the principle of a Government consulting with people in the private sector. I must therefore rule that on the evidence presented to me, I cannot accord this matter precedence over all other business. I stress, however, that I am ruling on this matter only as it relates to parliamentary privilege.

I would also emphasize that nothing which has been said in this House implies any reflection on the integrity of the 20 individuals to whom reference has been made. In that regard, I am indebted to the Rt. Hon. Leader of the Opposition who made that point abundantly clear toward the end of argument yesterday and was supported by other honourable Members, keeping in mind my admonition that I have asked honourable Members to remember that we must always guard the reputations of those outside this Chamber and respect their integrity and innocence in these matters.

I thank honourable Members for their interventions yesterday, interventions which were lengthy but which I believe were important.

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1. *Debates*, June 12, 1987, pp. 7046-7.
 2. *Debates*, June 17, 1987, pp. 7248-64.
 3. *Debates*, April 17, 1978, p. 4549.

FINANCIAL PROCEDURES

Ways and Means

Motion referring to a document not tabled in the House

January 29, 1990

Debates, pp. 7546-9

Context: On January 24, 1990, Mr. Nelson Riis (Kamloops) rose on a point of order regarding a Ways and Means motion concurred in the previous day which referred to a technical paper that had not been tabled in the House. The Member argued that this omission flouted both the parliamentary tradition which holds that a Ways and Means motion must be based on a document tabled in the House and the age-old practice that financial measures must originate in the House of Commons. According to Mr. Riis, the omission could create uncertainty about the scope of the Bill and the nature of the amendments the House could propose to it. The Hon. Michael Wilson (Minister of Finance) requested time to prepare a reply and the Speaker took the matter under advisement.¹ During Routine Proceedings, immediately prior to "Introduction of Government Bills", the Speaker asked the House to vote on the introduction and first reading of the Bill based on the Ways and Means motion at issue. He said he would deliver his ruling before the House proceeded with second reading of the Bill.² The following day, Mr. Wilson confirmed that the technical paper was not tabled but that other documents giving out information on the substance of the Ways and Means motions were tabled. The Minister also indicated that he would table the technical paper if the Speaker wished him to do so. Other Members also participated in the discussion.³ The Speaker reserved his judgement and on January 29, 1990, returned to the House to deliver his decision which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: There is agreement in the House, I understand, that I render a judgment now on a point of order raised by the honourable Member for Kamloops a few days ago rather than wait until the completion of Routine Proceedings. I am prepared to do that.

On January 24, 1990, the honourable Member for Kamloops rose on a point of order to contest the procedural acceptability of a Ways and Means motion in which there had been concurrence the previous day. While the Chair allowed the Bill, which was based on this motion, to be introduced and read a first time, I indicated to Members at the time that I would not allow second reading debate on the Bill to begin until the procedural arguments raised by the honourable Member for Kamloops had been considered and a decision rendered. I am now ready to rule on this matter.

Before entering into the case itself, I would like to address a technicality on the timing of the Member's point of order. The Member for Kamloops explained that he did not raise his point of order on January 23 because Standing Order 83(3) states, "a motion to concur in" a ways and means motion "shall be forthwith decided without debate or amendment".

The Chair would like to point out that the practice and rules of the House would not preclude a Member from raising a procedural objection to the admissibility of a Ways and Means motion when it is called.

Beauchesne Fifth Edition, Citation 235, states:

Any Member is entitled, even bound, to bring to the Speaker's immediate notice any instance of what he considers a breach of order—He should do so as soon as he perceives an irregularity in the proceedings which are engaging the attention of the House.

The Chair simply wants to point out the difference between the restriction against debate on the motion of concurrence and the raising of a point of order. I am quick to point out that while I have made these remarks in the interests of clarification, it makes no difference to the ruling I will make and in no way was the honourable Member for Kamloops prejudiced against putting his point of order and arguing the matter. In short, the Member could have raised his procedural arguments on January 23 but could not have debated the subject matter of the motion.

Let me now proceed to render my decision. On January 24, the honourable Member for Kamloops pointed out that a phrase in the motion of Ways and Means moved by the Minister of Finance referred to a document which had not been tabled in the House of Commons. Specifically, the important passage read:

That a tax—be imposed after 1990 under the Excise Tax Act at the rate of 7 per cent—as set out in the document entitled "The Goods and Services Tax" tabled in the House of Commons by the Minister of Finance on December 19, 1989 and "The Goods and Services Tax Technical Paper" issued by the Minister of Finance on August 8, 1989.

It is the second document referred to in the motion which at that time had not been tabled in the House.

The Member for Kamloops claimed that a Tax Bill had been founded in part on a document released through the press and not tabled in the House. And this, he contends, challenges the age-old practice that Money Bills must originate in the House. Furthermore, he asks whether amendments can now be proposed to the Bill increasing the tax to 9 per cent since the technical paper referred to in the motion outlined a plan for a 9 per cent tax.

The Chair acknowledges that these are serious questions worthy of careful consideration and a full explanation.

Before proceeding, it might be appropriate to explain briefly the significance of the Ways and Means motion, especially to our listening audience, but I suspect sometimes it might be of great help also to honourable Members.

Our parliamentary procedures are based on the premise that before a Government imposes any new tax, or before it seeks to continue any expiring tax, or before it increases the rate or scope of an existing tax, the Government must table a notice of a Ways and Means motion in the House.

“Ways and Means” is the expression used to describe the process by which the Government obtains the resources necessary to meet its expenses. In other words, how it raises taxes. Therefore, our practice requires that a notice of a motion outlining the proposed changes in taxation law be tabled in the House and that this motion be adopted in priority to first reading of a Tax Bill.

This motion of Ways and Means does not have to be identical to the subsequent taxation bill. In some cases, this motion is almost a word-for-word version of the subsequent Bill, but in other cases it may be simply a one-paragraph statement generally explaining the proposed changes.

Honourable Members can be forgiven if sometimes they are in a state of perplexity as to just what exactly is appropriate to include or to leave out of a Ways and Means motion because there has been a very great variety of forms, wording and structure of Ways and Means motions over the many years of the history of our Parliament.

In some cases this motion is almost a word-for-word version of the subsequent Bill, as I have said, but in other cases it may be simply a one-paragraph statement generally explaining the proposed changes. Our Standing Orders specify that the Bill must be, and I quote, “based on the provisions” of the Ways and Means motion. Many of my predecessors have explained in rulings that the words “based on” do not mean “identical to”.

I would now like to return to the case presently before us.

When the Member for Kamloops argued that the Ways and Means motion contains reference to a document not tabled in the House, he raised a number of important issues. First, the Chair has been asked to pronounce on whether it is proper for a Ways and Means motion to refer to a document not tabled in the House.

In considering whether a Ways and Means motion should only refer to documents tabled in the House, the argument appears to hinge on whether the House and Members had access to the documents and that these documents were public in nature. The need for such access is obvious. However, I hasten to add that there is nothing in our Standing Orders or in our practice to restrict all references in Ways and Means motions solely to documents tabled in the House.

The particular document in question, the technical paper issued on August 8, 1989, has an interesting history. As the Minister of Finance himself pointed out on January 25, 1990, the technical paper was the subject of a self-initiated committee study which resulted in the presentation of a report to the House on November 27, 1989. This technical paper was also the subject of a supply motion moved by the Member for Yorkton—Melville (Mr. Lorne Nystrom) on October 12, 1989, and I quote from page 4578 of *Hansard* where the Member, when he commenced debate on the part of the New Democratic Party, said:

I rise today to ask the House to reject this proposal in the technical paper on the goods and services tax.

He was there referring to the technical paper which I have just mentioned.

There is ample evidence that this particular document was well known in parliamentary circles and that copies were readily available to Members from the distribution office. Therefore, in terms of Members' access to this paper, the Chair must conclude that there is no problem. Furthermore, in making his argument on Thursday, January 25, the Minister offered to table the August 8 technical paper and, indeed, did so on Friday, January 26.

On strictly procedural grounds, I wish to repeat again there is no requirement that motions only refer to documents tabled in the House. Unless required by statute or our own Standing Orders, documents are tabled in the House as a courtesy for information purposes.

Far more problematic to the Chair is the ancillary question raised by the honourable Member for Kamloops concerning the possibility of amendments to the Bill based on the Ways and Means motion. This turns, of course, on the relationship between the motion and the taxation bill. The Member argues that the motion imposes an uncertain scope around the goods and services tax bill. Specifically, he points to the contradiction between the 9 per cent tax as outlined in the technical paper and the 7 per cent tax as set down in the December, 1989 document and the motion.

In the event that honourable Members or the public are wondering how this contradiction could be there, it is clearly there because the technical paper was written and made public some time ago and, of course, mentioned 9 per cent and the December document reflected changes in government policy. That is why the document refers to a 7 per cent tax.

On the strict matter of the rate itself, I should immediately say that the specific terms of the motion refer to a 7 per cent tax. When I say "the specific terms of the motion", I am talking about the specific terms of the Ways and Means motion which refer only to a 7 per cent tax and the Bill and any proposed amendments would therefore have to be limited to that rate as an upper limit.

On January 25, 1990, the honourable Minister of Finance also spoke to this point of order. He stated that the reference in the Ways and Means motion to the August 1989 technical paper—hat is the one that spoke about 9 per cent, the first one—and the December 1989 document tabled in the House had been made to be, in his words, “helpful”. As he explained on page 7470 of *Hansard*, and I quote the Minister:

...In short, we made reference to the August technical paper as an historical milestone of the GST policy development process in an effort to be helpful to Members of this House— In closing, I would again submit that the Ways and Means motion tabled on Monday of this week stands on its own in providing the scope and the legal authority for the GST legislation, with or without the reference to the August technical paper that my honourable colleague has referred to.

The Chair will accept the explanation given by the honourable Minister that the reference to the documents in the Ways and Means motion is peripheral to the expression of the financial initiative of the Government.

There would be very real difficulties in basing a Tax Bill on documents which were part of a consultative process, not least of all because those documents are not congruent one with the other. Each of the documents details different areas of concern on the general issue of the goods and services tax.

I must say in passing that I and others have examined both of these documents. They have been reviewed very carefully by the Chair in the preparation of this judgment.

In terms of proposing future amendments based on these documents, the Chair could be left in the unenviable position of reconciling the contradictions in these documents, trying to determine what constitutes the four corners of the Bill and the scope of the intended tax.

I think honourable Members, and I am sure the Minister, would agree that this would have been an intolerable procedural situation and one causing the Chair and the House some considerable difficulty.

In this regard, the Chair is reminded of a statement made by one of his predecessors, Speaker Jerome, when he had to decide on the relationship between a Ways and Means motion and the subsequent Bill. On December 18, 1974, Speaker Jerome said:

—the terms of the Ways and Means motion are a carefully prepared expression of the financial initiative of the Crown, and frequent departure from them can only invite deterioration of that most important power.⁴

As presently worded and distanced from the August and December technical documents, the Ways and Means motion declares simply that a goods and service tax will be implemented after 1990, calculated at a rate of 7 per cent:

- a) of the value of the consideration in respect of taxable supplies, on recipients of such supplies made in Canada;
- b) of the aggregate of the duty paid value of the goods and any excise tax imposed under the *Excise Tax Act* in respect of imported goods, on every person who imports goods into Canada; and
- c) of the value of the consideration in respect of taxable supplies, other than goods, imported into Canada, on recipients resident in Canada.

I think it should be noted that, in short, this particular Ways and Means motion presents a very broad statement of the financial initiative of the Government vis-a-vis the goods and services tax and so would appear to permit considerable scope for amendments to the Bill within, of course, the 7 per cent rate ceiling.

The terms of the motion itself which I have just outlined must serve as a beacon to guide Members in drafting any amendments. Consequently, in view of the Minister's explanation to the House that the motion stands on its own and does not derive any authority from documents previously issued by the Government, the Chair concludes that Bill C-62, which is based on the Ways and Means motion concurred in on January 23, may now proceed for second reading.

I want to say in addition that the argument put forward by the honourable Member for Kamloops was obviously extremely well researched and was very succinctly presented. I hope that honourable Members will be satisfied that in this judgment we have dealt adequately with the matters raised.

I thank the honourable Minister for assisting the Chair in the clarifications contained in his statements.

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1. *Debates*, January 24, 1990, pp. 7431-3.
 2. *Debates*, January 24, 1990, pp. 7433-4.
 3. *Debates*, January 25, 1990, pp. 7469-72.
 4. *Debates*, December 18, 1974, pp. 2380-1.

FINANCIAL PROCEDURES

Ways and Means

First reading of a Bill based on a Ways and Means motion; motion not previously concurred in; proceedings ruled null and void

October 9, 1986

Debates, p. 246

Context: On October 9, 1986, the Hon. Tom Hockin (Minister of State (Finance)) rose during Routine Proceedings under "Introduction of Government Bills" and asked leave to introduce a Bill to amend the Excise Tax Act and the Excise Act. The motion was agreed to and Bill C-10 was read the first time and ordered to be printed.¹ After noticing that the Ways and Means motion on which the Bill was based had not been concurred in by the House, the Speaker was obliged to rule immediately following Question Period. His decision is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: Earlier this morning under Routine Proceedings, a Government Bill to amend the *Excise Tax Act* and the *Excise Act* was introduced and given first reading. As this Bill is based on a Ways and Means motion which honourable Members who were watching the procedure this morning might notice has not yet been concurred in by this House, I regret to have to advise that this morning's proceedings in relation to the Bill are null and void and the Bill will remain on the *Order Paper* for reintroduction.

1. *Debates*, October 9, 1986, p. 221.

FINANCIAL PROCEDURES

Legislation: Senate amendments infringing on the financial initiative of the Crown; scope of the Royal Recommendation; authority of the Senate to split a Bill; relationship between the Senate and the House of Commons; privileges of the House infringed upon

July 11, 1988

Debates, pp. 17382-4

Context: *On July 8, 1988, the Speaker informed the House that a message had been received from the Senate¹ indicating that it had divided, into Part I and Part II, Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts, and that Part I was returned to the House without amendment. The Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)) then rose on a point of order objecting to the unprecedented action taken by the Senate in dividing the Bill. He argued that the Senate decision to split the Bill meant the Bill no longer possessed the required Royal Recommendation constitutionally necessary for such a "Money" Bill. Thus Standing Order 87 which states that the House of Commons alone can grant aids and supplies had been breached by this action. He then requested guidance from the Chair as to the acceptability of such a message. Mr. Russell MacLellan (Cape Breton—The Sydneys), on behalf of the Official Opposition, argued that the Government had included in the Bill, which was to be primarily for the financing of important regional development projects in Atlantic Canada, a completely separate section to do away with the industrial development division of the Cape Breton Development Corporation. Mr. MacLellan then stated that in his view it was thus perfectly acceptable for the Senate to split the Bill since it was composed of quite distinct parts, each standing as separate and independent legislative proposals. Other Members also intervened on the matter. The Speaker indicated that he would consider the matter very carefully in order to provide the House with some guidance on this matter.² He returned to the House on July 11, 1988 to deliver his decision which is reproduced below.*

DECISION OF THE CHAIR

Mr. Speaker: I want to bring to the attention of honourable Members that on Friday last there was some discussion in this Chamber as to a certain action taken by the other place, and for those uninitiated that means the Honourable the Senate, with respect to a Bill which after having passed in this place was sent to the Senate.

In the interests of honourable Members, but especially in the interests of the public who are watching and listening, I want to just in very simple language explain what happens because I have a technical ruling and it just may be that the

public of this country, which ought to understand what we are doing here, will find it easier to follow if I give a brief explanation in layman's language, if I can put it that way.

What happened was simply that a Bill numbered Bill C-103, which is a Bill respecting economic development in Atlantic Canada, was passed by this House in all stages and was sent to the Senate, as is the normal procedure. When it was being considered by the Senate, the Senate decided for whatever reason, to split the Bill, in other words to break it into two parts, and the Senate sent back to this House one part of the Bill. There was much argument in the House Friday as to whether or not this was justified. It is not for the Speaker to say whether or not on any substantive reason there was any logical justification for it.

Essentially, that is the point that the Speaker has been asked to comment upon, that is, whether it is under our system appropriate for the Honourable the Senate to take a Bill that has passed this place and to break it into two parts and send back one-half of the Bill, especially when it is a Money Bill which requires at its very beginning the Royal Recommendation for the expenditure of funds.

As I have said, that is a layman's explanation. It is important that all Canadians understand just exactly what it is the Chair has been asked to do in this particular case. I am now going to get into the formal part of the ruling. I will try not to keep the House too long. I hope that given this explanation it will be clear to everybody just exactly what has happened here and what the response of the Chair is in this ruling and the invitation that the Chair gives to this House as to whatever further response the House may wish to take.

On Friday, July 8 last, the Chair informed the House that a message had been received from the other place that it had divided Bill C-103, *An Act to increase the opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts*. The message from the Senate simply informed this House of its decision and reported back without amendment only Part 1 of Bill C-103.

The honourable Minister of State for the Treasury Board rose on a point of order objecting to the unprecedented action by the Senate in dividing Bill C-103 and requesting guidance from the Chair as to the acceptability of such a message. The honourable Member for Cape Breton—The Sydneys counter-argued that what the Senate had done was quite logical since Bill C-103 was composed of quite distinct parts and could easily be divided into two parts, each standing as separate and independent legislative proposals.

I point out that the honourable Member for Cape Breton—The Sydneys also argued strenuously for the substantive issue that is involved. As I said, that is for others to argue and is not for the Chair to comment upon.

The honourable Member for Churchill (Mr. Rod Murphy), supported vigorously by the honourable Member for Annapolis Valley—Hants (Mr. Pat Nowlan) and the honourable Member for Halifax West (Mr. Howard Crosby), objected to the innovative procedure of the Senate on the grounds that the privileges of this House had been violated. The honourable Member for Churchill claimed that the Senate had no authority to split a Bill originating in the Commons. The honourable Member for Annapolis Valley—Hants further added that if this precedent were to be allowed, the House of Commons would be at risk in seeing much of its legislation originating in an elected Chamber compromised in principle by the Senate's actions.

Before dealing with the essence of the problem, it might be useful to summarize what happened with Bill C-103, the Government Organization Act, Atlantic Canada, 1987.

The House passed Bill C-103 on third reading on May 10, 1988, and sent it to the Senate the same day with a message signed by the Clerk of the House.

Let me say parenthetically that it is unusual to refer to specific proceedings of the other place—again, for those listening, “the other place” is a term used here to mean the Honourable The Senate—in this House. The Chair finds itself obliged to lay that convention aside for clarity's sake in this particular issue.

On June 1, 1988, a motion was moved in the Senate to instruct the Senate Finance Committee to divide Bill C-103. A procedural debate ensued. Having first reserved his decision, the Speaker of the Senate on June 7, 1988, ruled the motion out of order. In other words, the Speaker of the Senate ruled the motion to split a Bill from the House of Commons as out of order. His reasoning which is a matter of record, was based on the fact that Bill C-103 is a Money Bill and that the Senate, while free to split Bills originating in the Senate, as a general principle should not divide Bills originating in the Commons.

Thereupon the ruling of the Speaker of the Senate was appealed to the whole House, that is, to the whole Senate, and was overturned by a majority vote. The motion to split Bill C-103 was moved, proposed, debated and passed. May I also add parenthetically that this House, the House of Commons of Canada, has seen the wisdom of leaving final procedural decisions to its presiding officer and accordingly has long abolished the appeal procedure relating to Speaker's rulings.

Bill C-103 was then studied by the Senate Finance Committee, which split the Bill in two, in accordance with the Senate's instructions. The Committee reported Part 1 of the Bill to the Senate and the Senate sent this part back to the House last Friday. That is where we are today. The House has only one part of Bill C-103.

I must also underline for the House that this procedural event is totally without precedent. I have been unable to find any instance in our practice in which the Senate divided a Commons Bill, or in which the Commons has divided a

Senate Bill. There are several cases in which the Speaker of the House of Commons has ruled certain Bills originating in the Senate out of order because they infringe the financial privileges of the House which are enshrined in the Constitution of Canada. I refer honourable Members in this case to *Journals* of November 12, 1969, and June 12, 1973, for two such examples.³

I refer honourable Members to page 502 of the 20th edition of *Erskine May*. It concerns a procedural incident in the British Parliament, where there had been an attempt in the House of Lords to split a Bill from the House of Commons, but this attempt failed after a motion to split the Bill was rejected. This incident is reported but the author carefully refrains from indicating how the Lower House could have reacted if the motion had passed. This incident occurred in 1852 and I could find no similar incidents anywhere since then.

A Canadian precedent does exist for a consolidation of two Commons Bills into a single legislative measure by the Senate. That took place on June 11, 1941, with a message from their Honours, from the Senate, asking for the concurrence of this House. The Commons agreed with the Senate proposal, that is, a proposal to take two Bills from this place and put them into one Bill.⁴ The Commons agreed with the Senate proposal waiving its traditional privilege, and a single Bill was eventually given Royal Assent. I underline that that was the act of this House in waiving its tradition of privilege and accepting the invitation of the Senate to put two Bills together.

If it is admitted that the Senate can consolidate two Bills, why then can it not divide one Bill into two or more legislative measures? The answer is at least in part in the message. In the 1941 case just alluded to the Senate specifically sought the concurrence of the House for its action. Apparently it was the disposition of this place to accept it. In the message received last Friday relating to Bill C-103, the Senate does not seek the Commons' concurrence in the division of the Bill, it simply informs this House that it has done so, and returns half of a Bill.

[...]

Whatever honourable Members may feel, I do not think that this is a partisan matter. I am trying to make it very clear that it is a procedural matter, and a matter of some importance to the workings of this place and its very important relationship with the honourable the Senate, which is very much part of the Parliament of Canada.

The Speaker of the House of Commons by tradition does not rule on constitutional matters. It is not for me to decide whether the Senate has the constitutional power to do what it has done with Bill C-103. There is not any doubt that the Senate can amend a Bill, or it can reject it in whole or in part. There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft Bills originating in the Commons, potentially so as to change their

principle as adopted by the House without again first seeking the agreement of the House. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, it is my opinion, and with great respect of course, that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103 and in reporting only part of the Bill back as a *fait accompli* has infringed the privileges of this place.

Furthermore, Bill C-103 has attached to it, pursuant to our Standing Orders and Section 54 of the Constitution, a financial recommendation of Her Excellency the Governor General. Again, for those who are watching and who are uninitiated in all the terminology that we use, there is a requisite that in a Bill that is going to call upon the expenditure of funds, a financial recommendation of Her Excellency the Governor General is necessary. So this Bill is in a very real sense a Financial Bill. The Senate is somewhat limited in its review of Money Bills. Standing Order 87, which is still on the books after many decades, is quite clear and it states:

All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

Certain questions remain to be answered: by splitting the Bill does the Royal Recommendation still apply? Have the financial privileges of the Commons been breached? Will the Crown assent to two Bills when it agreed to the introduction of a single one? As Speaker of the House of Commons, I will not attempt to answer such constitutional questions, but clearly this House has always considered Standing Order 87, which I just read, as setting out the special relationship between the Commons, that is, this House of Commons, and the Sovereign.

I have ruled that the privileges of the House have been infringed, However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the Message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them, if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

In conclusion, I wish to state to the House that while Bill C-103 is a Government Bill, the same situation could arise under our reformed rules for a Private Members' Bill. It is in the better interests of this place to request Their Honours in the Senate to first consult with this House before they report to us such unilateral action. As Speaker of the House of Commons of Canada I must uphold the privileges of this place at all times, and I must also advocate them privately,

publicly, and with vigour. Having said that, if on an issue of substance, the House wishes to waive those rights, as usual the Speaker will not enter into substantive debate but will follow the House's directives.

I thank all honourable Members for their valuable contributions in this most unique and interesting case.

Postscript: On July 18, 1988, the House debated a Message to the Senate. The motion moved by the Minister of State and Minister of State (Treasury Board) indicated that, in the opinion of the House, the Senate had contravened Standing Order 87 and infringed its privileges, and asked that the Senate return Bill C-103 in an undivided form.⁵ Later that day the House proceeded to the taking of the deferred division on the motion which was agreed to, on division.⁶ On August 18, 1988, a message was received from the Senate informing the House that Bill C-103 (as originally constituted) had been passed, without amendment.⁷ The Bill was given Royal Assent later that day.⁸

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1. *Journals*, July 8, 1988, p. 3112.
 2. *Debates*, July 8, 1988, pp. 17301-5.
 3. *Journals*, November 12, 1969, pp. 79-80; June 12, 1973, pp. 401-2.
 4. *Journals*, June 11, 1941, p. 491.
 5. *Journals*, July 18, 1988, p. 3210.
 6. *Journals*, July 18, 1988, pp. 3223-4.
 7. *Journals*, August 18, 1988, p. 3358.
 8. *Journals*, August 18, 1988, pp. 3359-60.

FINANCIAL PROCEDURES

Legislation: Senate amendments infringing on the financial initiative of the Crown: scope of the Royal Recommendation; relationship between the Senate and the House of Commons

April 26, 1990

Debates, pp. 10719-26

Context: On April 3, 1990, the Hon. Harvie Andre (Minister of State and Government House Leader) rose on a point of order to describe his reasons for considering as unacceptable the Senate message tabled March 20, 1990¹ respecting Bill C-21 on Unemployment Insurance and to seek the Chair's guidance on wording a motion for a return message to the Senate. Mr. Andre argued that amendments 5(a) and (b), 7 and 9 in the Senate's message were out of order because they were inconsistent with the conditions expressed in the Bill's Royal Recommendation and infringed on the financial initiative of the Crown. He added that the amendments proposed by the Senate to Bill C-21 would seriously compromise the Budget brought down on April 27, 1989, which the Commons had endorsed. Mr. Jean-Robert Gauthier (Ottawa—Vanier), on behalf of the Official Opposition, argued that the Minister had not raised his point of order at the first possible opportunity, i.e. on March 12, 1990, when consideration of the first message from the Senate about certain amendments to Bill C-21 had first taken place.² Mr. Gauthier stated that since the House had adopted a motion on March 13, 1990, indicating that it agreed to some of the Senate amendments but rejected others, it was illogical to argue now that the Senate had no right to amend the Bill because it was a Money Bill.³ Mr. Gauthier further cast doubt on the need for a Royal Recommendation to accompany the Bill, on the grounds that the amendments were designed to reduce charges already provided for in the Act. Other Members also intervened on the matter.⁴ The Speaker invited the Members to pursue the debate at another time.

On April 4, 1990, Mr. Jean-Robert Gauthier resumed debate on this point of order, as did Mr. Don Boudria (Glengarry—Prescott—Russell), Mr. Peter Milliken (Kingston and the Islands) and other Members on April 5, 1990. Mr. Milliken reiterated Mr. Gauthier's arguments respecting the validity of a point of order not raised at the earliest opportunity. He also argued that a point of order must concern business before the House. In his opinion, that was not the case.⁵ The Speaker reserved his judgement and returned to the House on April 26, 1990 to deliver his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On April 3, 1990, the honourable Government House Leader rose to contest the acceptability of certain amendments set out in the Senate message respecting Bill C-21, *An Act to amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act*. He sought "the Chair's guidance in formulating a motion for a return message to the Senate," and asked the Chair "to rule that certain amendments contained in the message from

the other place are out of order, because they differ in one way or another with the specific conditions laid out in the Royal Recommendation of Bill C-21, and because they infringe upon the financial initiative of the Crown.” In his reasoned and well-documented arguments, the honourable Minister also claimed that the proposed amendments infringed upon the financial privileges of this House in that the Senate amendments “undermine in a significant way the budget of April 27, 1989 in which this House has expressed its confidence.” He also claimed that the amendments violated the principle of the Bill, that is to set up the unemployment insurance program as an employer-employee finance program.

Following the honourable Minister’s intervention, we had, on April 3 and again on April 5, quite a full airing of this issue.

Perhaps it would be well to summarize briefly at this point the chronology of the proceedings to date on Bill C-21.

On April 27, 1989, the Minister of Finance (Hon. Michael Wilson) tabled a document entitled *The Budget Speech* which at page 12 reads: “At the same time, changes will be made to ensure that the financing of the program is consistent with our efforts to control the debt. Beginning January 1, 1990, unemployment insurance payments will be fully financed by employer and employee premiums.” This budget was adopted by the House on May 11, 1989. Subsequently, on June 1, 1989, the Bill entitled *An Act to Amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act* was introduced in this House and read a first time June 1, 1989. The Bill was debated at second reading on June 6, 7 and 21, 1989. The debate at second reading was closed June 21, 1989 and the Bill referred to a legislative committee.

The committee after travelling, hearing witnesses and considering the Bill at length, reported it back to the House with amendments on October 10, 1989. The Bill was considered at report stage on October 16, 1989. The time allocation motion covering both report stage and third reading was debated and agreed to on October 24, 1989. On October 25, the Bill was again considered at report stage and concurred in with further amendments. It was debated at third reading on November 2, and after further debate on November 6, 1989, read a third time and passed.

Subsequently, it proceeded through the Senate and was there amended. The Senate sent a message to the House asking this House to agree to amendments it made to the Bill. This first message from the Senate was considered on March 12 and March 13. Debate on the motion of the Minister of State and the Leader of the Government in the House of Commons in relation to the Senate amendments was closed and the motion concurred in on March 13, 1990. Therefore, on March 13, this House sent a message back to the Senate setting out its agreement with some of the amendments and its rejection of others. This occasioned a second message from the Senate which is recorded in our *Votes and Proceedings* of March 20, 1990.

In this second message the Senate informed the House of Commons of its concurrence in the amendments made by the House to amendments Nos. 1, 4(b) and its insistence upon its amendments 2(a), (b) and (c); 3(a) and (b); 4(c) and (d); 5(a) and (b); 6, 7, 8 and 9.

Finally, in the third message on March 21, 1990, the Senate set out the observations—and I underline that word—contained in the fourth report of the Special Committee of the Senate on Bill C-21. That is the position the House was in when the Government House Leader rose on April 3 to ask the Chair “to rule that amendments 5(a) and (b), 7 and 9 in the message from the other place are out of order because they differ in one way or another with the specific conditions laid out in the Royal Recommendation of Bill C-21, and because they infringe upon the financial initiative of the Crown.”

I want, of course, to thank all honourable Members who assisted the Chair by participating in the discussions of this complex matter on April 3 and April 5. In the interests of both gravity and clarity I will summarize and marshal the several arguments into two categories.

All the arguments advanced dealt either with the substantive question of whether the Senate is entitled to amend Bill C-21 as it did or they questioned the process by which the Senate amendments were being challenged.

I must express my gratitude to the honourable Minister for indicating when he rose on this issue that he did not expect an immediate reply. As the Minister and the Parliamentary Secretary (Mr. Albert Cooper) both pointed out, our relationship to the other House is a most fundamental one which goes back to the beginnings of parliamentary democracy.

I would not want to render a decision touching on such momentous matters in haste. Thus, I reiterate my thanks to all Members for allowing me some time and distance to sort out the threads of argument advanced and to formulate a considered response.

During the course of the argument, the Chair attempted to direct the honourable Member by stating its understanding of the substantive issue and I think that may bear repeating.

What we have here is a Bill based upon the budgetary policy of the Government, as approved by the House of Commons, which amends existing legislation, that being the *Unemployment Insurance Act and the Employment and Immigration Department and Commission Act*. The Bill proposes in part to eliminate funding from the Treasury of Canada to the unemployment insurance account and to make that account a self-sufficient fund by means of contributions paid directly by the employers and employees. That is a somewhat simplistic explanation of the Bill that was passed by this House. Now the Senate has made amendments to this proposal.

The Senate has returned with the proposal that some of the funding which this House agreed to eliminate should be restored. According to the Government House Leader the Senate amendments would cost the Consolidated Revenue Fund \$1.75 billion annually. The question is this: Is it proper for the Senate to restore a charge which this House has taken away? The question arises because of two fundamental principles. These are that, first, Bills for the spending of public moneys must originate in the House of Commons, as stated in Section 53 of the *Constitution Act [of] 1867*; and, second, such Bills must be recommended by a message from the Governor General which can only be obtained and presented in the House of Commons by a Minister of the Crown. This is called a Royal Recommendation. The foregoing is also a very basic explanation of the substantive matter that has been preoccupying the Chair.

In addressing this substantive issue, the honourable Members for Ottawa—Vanier, for Glengarry—Prescott—Russell and for Kingston and the Islands all questioned the necessity for a Royal Recommendation in respect of Bill C-21, contested the argument that the Senate had no right to amend a Bill of this nature and insisted that since the amendments made to the Bill reduced existing charges provided for in the existing statute, they in no way infringed upon the financial initiative of the Crown. The honourable Member for Saskatoon—Clark's Crossing (Mr. Chris Axworthy) also supported the latter contention.

I should now like to turn to the second group of arguments, those that question the process by which the Senate amendments are being challenged. In doing so at this point, I want to emphasize that in the Chair's view these present a threshold which must be crossed before we can proceed to further consideration of the substantive issues.

I would include in this category a number of inter-related arguments. The honourable Member for Ottawa—Vanier, the honourable Member for Kamloops (Mr. Nelson Riis) and the honourable Member for Saskatoon—Clark's Crossing, all pointed out that the Chair ought not to rule on legal or constitutional issues. In addition, they argued strenuously, as did the honourable Member for Kingston and the Islands, that, if the proposed Senate amendments were not in order, they should have been challenged on the first occasion when they were before the House, that is, on March 12 and 13 last, when the House first considered a return message to the other place.

The other place, for the public who is watching, means the Senate. These are words that we use to refer to the Senate; we call it the other place.

Having already made a decision to accept some of the Senate amendments and to reject others, and having so reported to the Senate, this line of argument continues, it is not now open to the House to reopen consideration as to the acceptability of the amendments. Corollary issues as to the purpose of asking the

Chair to rule on the Senate amendments and the consequences of the Speaker of the House of Commons ruling a message from the other place out of order were also advanced.

My initial reaction, as a presiding officer, was that, if the acceptability of amendments made to a Bill in this House were in question, then, of course, the Chair must make a determination as to the admissibility of the amendments at issue. That is the customary role for the presiding officer to play. It is the duty of the Chair to rule on amendments at each stage of a Bill's passage through the House. Accordingly, my first reaction was to assess the receivability of the questioned amendments. However, as I explained, the Chair must take into account not only the fact that amendments to the Bill are called into question, but at what stage they are questioned.

In fact, the House has already pronounced itself on the very amendments the Government House Leader invited me to rule on and the honourable Member for Ottawa—Vanier has complained that it is too late for the Chair to now rule on their acceptability. It must be noted that the Senate, in its message of March 20, 1990, has insisted on amendments 5(a) and (b), 7, and 9. There is no doubt that the amendments are now, again, before the House for consideration and could be adopted if the House so wished.

It can be argued that the honourable Government House Leader should have raised his points on March 12 or March 13 last, but I see no reason to prevent his raising the matter at this stage, since the Senate message has returned those very amendments for reconsideration by the House. If those Senate amendments can be further amended, adopted or disagreed with, as *Beauchesne* Fourth Edition, Citation 282 suggests, then logically they would also be subject to procedural challenge.

Therefore, the Chair rules that the intervention of the Minister is valid at this time and I will attempt to reply to the various points raised in that regard.

The honourable Government House Leader said he was encouraged by the decision of the Chair of July 11, 1988 on Bill C-103, the Atlantic Canada Opportunities Agency Bill, and I should like to turn for a moment to that decision.

In that instance, the Senate had split a Bill the House had passed and had reported only a portion of it back to the House. It was the unilateral action of the Senate in that matter that I found objectionable and I said, in part:

There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft Bills originating in the Commons, potentially so as to change their principle as adopted by the House without again first seeking the agreement of the House. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, it is my opinion, and with the great respect of course—

I am quoting now from a former judgment.

—that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103 and in reporting only part of the Bill back as a *fait accompli* has infringed the privileges of this place.

I went on to say:

I have ruled that the privileges of the House have been infringed. However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them, if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

I hasten to add, however, that I also said at that time that:

The Speaker of the House of Commons by tradition does not rule on constitutional matters. It is not for me to decide whether the Senate has the constitutional power to do what it has done with Bill C-103.⁶

Later, having noted that Bill C-103 was a financial Bill and that the Senate is somewhat limited in its review of Money Bills, I specifically declined to answer such constitutional questions as whether the Royal Recommendation still applied to the split Bill and whether the financial privileges of the Commons had been breached. In so ruling, I relied heavily on actions of two of my predecessors in the Chair.

My research indicates several occasions since Confederation when the Senate amended Commons Bills with financial implications. For example, messages were received by the House on May 23, 1873, May 23, 1874, September 15, 1917, May 23, 1918, June 11, 1941, and July, 14, 1959.⁷ A close examination of these six cases reveals that the House agreed with the Senate amendments in all but two of these instances. In 1873, the House disagreed with all the amendments and, in 1959, it agreed to one and disagreed with another. What is interesting to note from a procedural point of view is that the Speaker was only required to comment on two of the occasions, namely in the 1917 and 1959 cases.

In the first instance on September 15, 1917 the Speaker replied to two points of order, one regarding the authority of the Senate to amend a Money Bill and another regarding the obligation of the House to insist on its privileges and reject the amendment. On the first issue, the Speaker stated, and I quote:

—the question whether the Senate can make such amendments as has been made in the Bill now under consideration is a point of constitutional law in respect to which it would, I think, be improper for me to undertake to give an official decision. Matters of such high constitutional import are for the House and not for your Speaker to determine.

On the second issue, he stated:

—there is nothing contained in—our rules which prevents this House from adopting as its own, amendments such as this now under consideration—in my judgment the principle involved as to the authority of this House to waive under stated conditions its rights and privileges is the same.⁸

In short, my predecessors many years ago refused to become involved in a constitutional issue which should be settled by negotiation between the House and the Senate, and further ruled that nothing should prevent the House from waiving its financial rights and adopting the Senate amendment as though it were its own. I say that is an option open to the House.

The second case further clarifies the situation and emphasizes the fine line between the constitutional and procedural issues. After the government moved concurrence on certain Senate amendments on July 14, 1959, the Speaker drew the attention of the House to the procedural difficulties with a motion before the House to concur in a Senate amendment and to waive the House's rights, that is, the House of Commons' rights. The Speaker, in 1959, ruled, and I quote:

—if the house in its wisdom feels that—it should waive its asserted privileges in this particular case, by doing so it in effect suspends Standing Order 80(1). Therefore the view which I take is that unless the motion properly suspends Standing Order 80(1), it would require the unanimous consent of the House at this time to pass the amendments which are proposed—I have come to the conclusion that the motion—would require notice. That is why I said Standing Orders can only be suspended by an Order of the House made on proper notice or by unanimous consent.⁹

In the 1959 case, unanimous consent was withheld and four days later the Government introduced another motion, with notice to concur in some amendments while rejecting others. This motion made reference to “the sole and undoubted right of the Commons to impose taxation” and was agreed to by the House.¹⁰

The 1917 and 1959 cases clearly illustrate the longstanding principle that the Speaker should not become involved in constitutional issues regarding the authority of the Senate to amend money Bills, but may only bring procedural irregularities affecting Standing Order 80(1) to the attention of the House in order that it can safeguard its own constitutional financial prerogatives.

I would now turn to the specifics of the case before us. In looking closely at the amendments of the Senate to Bill C-21, I must admit that on the question of the principle of the Bill, the honourable Minister has raised an extremely valid issue. There is no doubt in my mind that the Senate by way of amendment is modifying the principle of the Bill, something which would certainly not be allowed at committee stage in this House. If the Senate amendments were adopted, the Government will clearly continue to support financially the

unemployment insurance account as was stated by the Minister. That would run contrary to the approved budgetary policy of the Government and contrary to the principle of the Bill as adopted by the House of Commons.

However, for the same reasons referred to earlier in my ruling of July, 1988, the Speaker of the House of Commons cannot unilaterally rule out of order amendments from the other place. I can comment, as I am doing, but the House as a whole must ultimately make the decision to accept or reject amendments from the Senate, whether they be in order according to our rules or not.

As I have said, it is also clear from the review of the amendments of the Senate, which can be found in the *Votes and Proceedings* of March 21, 1990,¹¹ that there will be continuing charges to the Consolidated Revenue Fund if Bill C-21 is so amended. It is perhaps less clear that there will be an increased charge over and above that which is presently lawfully provided for in the *Unemployment Insurance Act* itself.

I point out that the *Unemployment Insurance Act* was passed many, many years ago and has been amended many, many times. So, Bill C-21 is an amendment to that Act.

It would certainly be permissible in this House to restore in an amending Bill charges already provided for in existing legislation. For guidance on that point, I refer honourable Members to *Erskine May Parliamentary Practice*, 21st Edition, page 716, and I quote:

The same principle applies in the case of amendments moved to a Bill which abolishes or reduces a charge authorized by existing law. Amendments to such a Bill, which are designed to restore a portion or the whole of the charge which the Bill proposes to reduce or abolish, are in order without the need of a preliminary financial resolution.

As the honourable Parliamentary Secretary to the Government House Leader stated, that citation applies to the British House of Commons. But *Erskine May* is silent on what the Lords may do. Again, I have to say that it is not within my power to rule on whether the Canadian Senate should have the constitutional right to restore charges when the Commons have decided otherwise. As the honourable Minister said on page 10144 of *Hansard* of April 5, 1990: "It is up to the House of Commons to defend our responsibilities and our authorities."

Having addressed the amount and limits of the charges, the Chair has however some concern in the area of conditions and qualifications, objects and purposes.

I should remind honourable Members that Citation 540 of *Beauchesne* Fifth Edition states:

In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it

extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has demanded or recommended a charge. And this standard is binding not only on private Members but also on Ministers whose only advantage is that, as advisors of the Crown, they can present new or supplementary estimates or secure the Royal Recommendation to new or supplementary resolutions.

If reviewed against this citation, the Senate amendments seem to have some impact on the Royal Recommendation, the extent of which is difficult to determine. Thus, for greater certainty the House might want to draw this to the attention of the Senate, even if the House were to choose to waive its financial prerogatives, pursuant to *Beauchesne* Fifth Edition, Citation 115, which reads:

It is the function of the Speaker to direct the attention of the House, when the occasion arises, to a breach of its privileges in Bills or amendments brought from the Senate, and to direct the special entries to be made in the *Journals* by which the House, in respect of particular amendments, signifies its willingness to waive its privileges without thereby establishing a general precedent.

The honourable Government House Leader further claimed that the Senate has interfered with the budgetary process of the Government, as approved by the House of Commons. He said: "To tamper with that, or to reverse that somehow in another place, is to tamper with the very fundamental purposes and powers of this body," meaning the House of Commons.

The honourable Government House Leader has found support at page 340 of a book entitled *The Modern Senate of Canada*, which was published in 1965. The author's name is Mr. F.A. Kunz. He says:

On the contrary, the Senate has acted in full understanding of the meaning and the implications of responsible government and accepted as binding upon itself the proposition that it should not unduly disturb what has come to be called the "balance of ways and means"; or, as Hopkins says, "that it would be inadmissible to tamper with the overall financial program submitted by the Government in its budgetary proposals in such a way as to effect a material change in the budgetary surplus or deficit envisaged therein."

I repeat: "in its budgetary proposals in such a way as to effect a material change in the budgetary surplus or deficit envisaged therein." As I have already noted, the honourable Government House Leader has said that the amount involved is \$1.75 billion annually.

That comment by Kunz is based on an article by an author named E. Russell Hopkins, who is a former law clerk and parliamentary counsel to the Senate of Canada.

At pages 321 and 322 of the *Canadian Tax Journal*, Volume 6, September/October 1958, Hopkins comments on Section 53 of the Canadian Constitution. He says:

Section 53 of the Act provides that "Bills for appropriating any part of the Public Revenue, or for imposing any tax or impost, shall originate in the Commons." This clearly means that all taxation or appropriation Bills must originate in the House of Commons. It is universally understood that it would be a violation of the principle embodied in this provision for the Senate to propose amendments which would increase a tax or appropriation proposed by the House of Commons.

I have a duty to comment, but I can only ask: What would the learned author say if the words that I just read "increase a tax or appropriation" were substituted or added to by the words "an increase in the budgetary deficit"? I bring this query to the attention of the House, and to the public who ultimately pay all the bills.

Hopkins went on to say:

The question whether the Senate should or should not amend a Money Bill in such a way as to disturb the balance of ways and means in any fiscal year is one of policy rather than of law: that is, it is a question for the Senate itself to determine in all the circumstances. The Senate may of course reject a Money Bill absolutely, and, in its view, may reduce a tax or appropriation.

He went on to say:

In either of these events the balance of the ways and means would be upset.

What Hopkins has concluded is that interventions by the Senate in Money Bills inevitably will change the budgetary and spending plans of the Government.

I may say to honourable Members and to the public that is listening, there are many Canadians across this country who may or may not have been well educated and some who think that they were well educated, who have no idea whatsoever of the awesome powers which the Senate claims to itself over the elected lower House. That is one of the reasons why it is important that honourable Members listen carefully to this judgment because there is information here which many Canadians are just absolutely unaware of.

In attempting to shed light on this situation, I have looked at the British practice and I have found the following at pages 518 and 519 of *Erskine May* Twelfth Edition. I am going to quote quite a bit of it because it is time this country got a history lesson. I am quoting from *Erskine May*. This is in Great Britain.

In 1909 the Finance Bill which gave effect to the budget of the year was met on its second reading in the House of Lords by an amendment declaring—

And I quote the amendment. This is the amendment by the House of Lords, which is their upper House.

—"That this House is not justified in giving its consent to this Bill, until it has been submitted to the judgment of the country." The rejection of the Bill by the Lords was condemned in the House of Commons by a resolution declaring "that the action of the House of Lords in refusing to pass into law

the provision made by the House of Commons for the finances of the year is a breach of the Constitution, and an usurpation of the privileges of the House of Commons.”

Note that that statement was made by the House, not by the Speaker, but by the House of Commons of Great Britain.

A dissolution of Parliament followed,—

Which is a polite way of saying that an election followed.

—and in the new Parliament a Finance Bill to take the place of that rejected by the Lords was passed by both houses.

Now there are a lot of historical and very interesting things that happened that led to the House of Lords finally passing that.

The House of Commons also agreed to three resolutions in a committee of the whole house dealing with relations between the two houses and the duration of Parliament, as follows:—

First of all, on Money Bills—that is what we are talking about here—that British House of Commons resolution said this:

“That it is expedient that the House of Lords be disabled by Law from rejecting or amending a Money Bill, but that any such limitation by Law shall not be taken to diminish or qualify the existing rights and privileges of the House of Commons.

“For the purpose of this resolution a Bill shall be considered a Money Bill if, in the opinion of the Speaker, it contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; charges on the Consolidated Fund or the provision of money by Parliament; supply; the appropriation, control, or regulation of public money; the raising or guarantee of any loan or the repayment thereof; or matters incidental to those subjects or any of them.”

The House of Commons resolution went on to deal with Bills other than Money Bills.

“That it is expedient that the powers of the House of Lords, as respects Bills other than Money Bills, be restricted by Law, so that any such Bill which has passed the House of Commons in three successive Sessions and, having been sent up to the House of Lords at least one month before the end of the Session, has been rejected by that House in each of those Sessions, shall become Law without the consent of the House of Lords on the Royal Assent being declared: Provided that at least two years shall have elapsed between the date of the first introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time.”

“For the purposes of this Resolution a Bill shall be treated as rejected by the House of Lords if it has not been passed by the House of Lords either without

Amendment or with such Amendments only as may be agreed upon by both Houses.”

It went on to say other things with respect to the duration of Parliament.

“That it is expedient to limit the duration of Parliament to five years.”

Upon these resolutions when agreed to by the House a Bill was brought in but further progress was not made with it. In the first session of the new Parliament which met in the following year the Bill was again introduced, was passed by both houses, and received the royal assent as the Parliament Act, 1911.

It is important for every Canadian who cares about who decides how we spend our money to know that in Great Britain they settled this 80 years ago.

The British Parliament apparently resolved their problem some 80 years ago with the House of Lords recognizing in law the claim of the House of Commons as the final authority on Money Bills. Such is not the case in Canada. The Senate has consistently refused to concede the power to amend Money Bills. I would refer honourable Members to the Ross report which was tabled in the Senate of Canada on May 15, 1918 and subsequently adopted by the Upper House, rejecting the House of Commons’ position on the Constitution. At page 199 of the Senate *Votes and Proceedings* for May 15, 1918, the Ross report states:

When the House of Commons of Canada claims that it can drag the Senate beneath it as the Commons did the House of Lords in England and through the “swamping power”—

Meaning there the addition of lords to the Upper House.

—the answer is that it—

That is the House of Commons of Canada.

—has not got this power and is as much bound by the British North America Act as the Senate. We have a Constitution that can only be altered by the Imperial Parliament. The House of Commons cannot by passing rules add to its powers or diminish those of the Senate.

That was the last Senate report of a Senate committee in 1918.

Therein lies the Canadian constitutional dilemma! Should the Senate choose to further insist on its amendments, the two Houses may well be unable to resolve their differences and be faced with a serious constitutional crisis. The strength of our parliamentary system lies in all three constituent parts that is: the Crown, the Senate and the House of Commons respecting their constitutional roles.

The events in the United Kingdom at the beginning of the 20th century do not provide the Speaker of this House with any procedural solution to this particular conflict. Because of the Canadian parliamentary practice, the Speaker of the House of Commons is powerless when an impasse develops around this long unresolved constitutional issue which is now exacerbated by a deep difference of opinion on matters of public policy.

I want to refer honourable Members to two matters. I do this as lawyers say, *obiter dictum*. That perhaps is part of the substandard ruling. But there is an interesting, curious book called *A Student's Manual of English Constitutional History* by a master of arts named Dudley Julius Medley, tutor of Keble College, Oxford, and examiner in the honour school of modern history. It was published in 1898. He was talking, of course, before the British—if I could be permitted to say this—came to their senses.

This vast increase in membership [of the House of Lords] has almost of necessity resulted in a weakening of the sense of political responsibility in individual members of the House of Lords, while the completion of the representative character of the House of Commons has made the body of the electorate increasingly impatient of any check by the hereditary House. Those who do not believe in constitutional cataclysms cling to the necessity of a second chamber.

I also draw to the attention of my colleagues—I know they will be very interested—on both sides of the House to hear the comments by Sir Wilfrid Laurier on September 7, 1917. As I say, this is not put in as the substance of the ruling. It is just brought to Members' attention, and I hope the attention of every Canadian who has a chance to listen to or read this judgment. This is what Sir Wilfrid Laurier said on September 7, 1917.

This was his view. He was a great House of Commons man: "Under Rule 78 the Senate has no right to amend or alter in any way a Money Bill sent to them from this House." Rule 78 is the same as our Rule 80 paragraph 1.

He said: "This House alone has the privilege of dealing with Money Bills. The only right the Senate has is that of rejecting or assenting to such Money Bills. That rule has been confirmed over and over again in England."¹²

Now, I point those two interesting comments out to honourable Members because there is a long history in this. There have been strong views on both sides of this Chamber over the years as to what the Constitution does say, and what the Constitution ought to say in terms of our country, and the powers of our House of Commons of Canada.

I want to thank the House for its indulgence and its patience in listening so carefully to this lengthy explanation. This ruling has not been an easy one for we are here dealing with a fundamental issue which goes to the very heart of the

Canadian parliamentary process. May I close by saying I am extremely grateful to the Members who made such useful contributions to assist the Chair in its consideration of this issue.

To say anything further, despite the fact that I am the Speaker of the House of Commons, would be trespassing upon what I am called upon to do, and that is to rule on procedural matters.

What I may think about the constitutional impasse which we have in this country, is not for me to say. If any of my colleagues or the public want to speculate on what I think, of course, that is their free and democratic privilege.

Postscript: On May 7 and 8, 1990,¹³ the House debated a motion by the Minister of Employment and Immigration (Hon. Barbara McDougall) in relation to the Senate amendments in dispute. The motion, which was concurred in on May 9, 1990, indicated in part that the House continued to disagree with certain amendments made by the Senate, in that they “infringed the financial initiative of the Crown in a manner at variance with parliamentary practice respecting the Royal Recommendation.” The motion claimed that two amendments, in particular, violated “the principle embodied in Sections 53 and 54 of the Constitution Act, 1867 and constitutional practice.” The House then reaffirmed its “sole and undoubted democratic right, which will not in this matter be waived, not only to grant aids and supplies to the Sovereign but to direct, limit, and appoint for all such grants their ends, purposes, considerations, conditions, limitations and qualifications, none of which are alterable by the Senate.”¹⁴ On October 23, 1990, the Senate sent a message back to the House indicating, in part, that it did not insist on the amendments in dispute. The Bill was given Royal Assent later that day.¹⁵

1. *Journals*, March 20, 1990, p. 1374.
2. *Journals*, March 12, 1990, pp. 1324-7; February 21, 1990, pp. 1257-9.
3. *Journals*, March 13, 1990, pp. 1332-7.
4. *Debates*, April 3, 1990, pp. 10140-55.
5. *Debates*, April 5, 1990, pp. 10230-42.
6. *Debates*, July 11, 1988, pp. 17382-5.
7. *Journals*, May 23, 1873, pp. 429-30; May 23, 1874, pp. 317-9; September 15, 1917, pp. 662-4; May 23, 1918, p. 333; June 11, 1941, p. 491; July 14, 1959, pp. 707-10.
8. *Debates*, September 15, 1917, p. 5883.
9. *Debates*, July 14, 1959, pp. 5980-1, 5983-4.
10. *Journals*, July 18, 1959, pp. 750-1.
11. *Journals*, March 21, 1990, pp. 1380-4.
12. *Debates*, September 7, 1917, pp. 5479-80.
13. *Journals*, May 7, 1990, pp. 1653-4; May 8, 1990, pp. 1661-4.
14. *Journals*, May 9, 1990, pp. 1668-71.
15. *Journals*, October 23, 1990, pp. 2154, 2156.

FINANCIAL PROCEDURES

Legislation: Practice with regard to the Royal Recommendation

April 23, 1990

Debates, pp. 10539-42

Context: On March 27, 1990, prior to the beginning of the debate on the motion for second reading and referral to a legislative committee of Bill C-69 respecting Government Expenditure Restraints, Mr. Peter Milliken (Kingston and the Islands) rose on a point of order to contest the validity of attaching a Royal Recommendation to the Bill. He argued that the Bill was designed to reduce government spending, that it entailed no new charge on the Treasury and thus required no Royal Recommendation. He further argued that the reason the Royal Recommendation had been included was to "stifle amendment by Members of the Opposition, amendments which Members are entitled to put." Other Members also intervened on the matter.¹ The Acting Speaker (Hon. Steven Paproski) took the matter under advisement and called on the Hon. Gilles Loiselle (Minister of State (Finance)) to begin the debate. The Speaker returned to the House on April 23, 1990 to deliver his decision which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On March 27, 1990, the honourable Member for Kingston and the Islands rose on a point of order to question the procedural acceptability of attaching a Royal Recommendation to the Government Expenditures Restraint Bill, Bill C-69. The honourable Member delivered a well researched argument, citing several precedents and making references to learned parliamentary authorities.

The honourable Members for Kamloops (Mr. Nelson Riis) and Gloucester (Mr. Douglas Young), as well as the Minister of State for Finance, also made contributions on this issue.

That exchange assisted the [Chair] in considering this complex issue which relates to a very fundamental element of our parliamentary system of government—the financial initiative of the Crown.

To many of our viewing audience, and indeed many of the honourable Members of the House, the subject matter of the financial initiative of the Crown sounds like an extremely Byzantine and hopelessly complicated matter. However, if you will bear with me for a few moments, the [Chair] will attempt to set out the issue in straightforward terms because it does have a serious impact on how the House conducts its business.

I wish to begin this explanation by quoting from page 247 of the *Annotated Standing Orders* which reads:

In our system of parliamentary government, the Sovereign, as represented by the Governor General, and acting on the advice of His or Her responsible ministers,—

—that is, the Cabinet—

—is charged with the management of all revenues of the State and the payment of all public expenditures. The appropriation—

—that is, the spending—

—of money for these payments has to be first recommended by the Governor General to the House (known as a Royal Recommendation) and then approved by Parliament.

In other words, before the House can introduce any Bill which would result in an expense to the Treasury, it must obtain a statement from the Governor General indicating that he or she recommends to the House of Commons the appropriation of public revenue as set out in the Bill. This is what is known as the Royal Recommendation.

This requirement for a Royal Recommendation is enshrined in our Constitution. As the honourable Member for Kingston and the Islands explained, section 54 of the *Constitution Act, 1867* absolutely requires that a royal message of recommendation be obtained for the appropriation of any part of the public revenue or any tax prior to the adoption of a Bill.

Prior to the significant changes in our Standing Orders relating to financial procedures, which occurred in 1968, a Bill such as Bill C-69 would have been preceded by a motion adopted in the Committee of the Whole.

Under this procedure, it was fairly easy to ascertain whether any amendment proposed to the Bill was in order or not because it had to comply with the detailed motion adopted in Committee of the Whole. That is a committee of the whole House with all Members who are interested in that particular matter in attendance. It is not a committee meeting outside the Chamber.

However, the major complaint about this procedure was that it was too lengthy. It involved a debate to go into Committee of the Whole, another debate in committee on the motion, called the resolution stage, and further debates on the various stages of the Bill.

In December, 1968, this procedure was changed. The resolution stage in Committee of the Whole was eliminated, as was the Committee of Supply and the Committee of Ways and Means. The Royal Recommendation was given to the House thereafter simply as a printed notice, pursuant to Standing Order 79(2), which reads as follows:

The message and recommendation of the Governor General in relation to any Bill for the appropriation of any part of the public revenue or of any tax or

impost shall be printed on the *Notice Paper* and in the *Votes and Proceedings* when any such measure is to be introduced and the text of such recommendation shall be printed with or annexed to every such Bill.

For several years following the changes, the form of the Royal Recommendation remained a detailed expression of the spending authority given by the Crown. There were occasions when honourable Members complained about the scope and adequacy of the Royal Recommendation, or that it was poorly drafted.

This prompted Speaker Lamoureux to make the following comment on November 2, 1970 at page [783] of *Hansard*:

I have very often felt it should not be necessary that our recommendations should attempt to go into all the details of the Bill because we are bound to get into difficulties. [...] We want to know whether His Excellency thinks this is a Bill with which we can proceed. If he tells us that in three words, we should take his word for it.

By 1976, the wording of the Royal Recommendation had changed. Bills introduced in the House from this point on bore a brief and abbreviated recommendation such as the following: “His or Her Excellency, the Governor General, recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled—” and then the name of the particular Bill would follow. Under these conditions, the Bill itself must now be used to determine the amount of the charge, the objects, purposes, conditions and qualifications set by the Royal Recommendation.

At first glance, one might think one could easily discern whether any new charge is placed on the Treasury. If a rate is increased, then it would appear to be obvious that an additional charge is placed on the Treasury and a Royal Recommendation must be obtained.

According to Citation 540 of *Beauchesne* Fifth Edition, however, the amount of the charge is not the only consideration. It states:

The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication, to which the Royal Recommendation is attached, must be treated as laying down *once for all* (unless withdrawn and replaced) not only the amount of the charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has demanded or recommended a charge.

As *Beauchesne* explains, there are instances where the objects, purposes, conditions and qualifications may be affected in such a manner as to involve financial implications. For instance, if a program is extended to cover an additional period of time or if the parameters of a program are broadened to cover more applicants, then a Royal Recommendation is necessary.

With this background having been explained, I would like to return now to the point of order raised by the honourable Member for Kingston and the Islands. In his presentation the honourable Member suggests that the Government Expenditures Restraint Bill reduces government spending. It does not involve any new charge on the Treasury and, therefore, requires no Royal Recommendation. Furthermore, he suggested these recommendations are included in Bills "in an attempt by the Government to stifle amendment by Members of the Opposition, amendments which Members [...] are entitled to put."

In reply, the honourable Minister of State for Finance explained that the Royal Recommendation was obtained for this Bill on the advice of the Office of the Law Clerk and Parliamentary Counsel because some provisions in the Bill widened existing conditions. He referred in particular to clause 2.

The Government Expenditures Restraint Bill is an extremely complex piece of legislation. The honourable Member for Kingston and the Islands himself described the Bill as containing "all kinds of formulae that I do not understand." The Chair has a great deal of sympathy for all honourable Members on both sides of the House who attempt to glean some understanding from Bills of this kind.

A review of clause 2 shows a formula for calculating limits on the 1991 contributions under the *Canada Assistance Plan*. Clause 5 provides for an escalator formula in the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*.

There is no doubt in the [Chair's] mind that the proposals in Bill C-69, which is an amending Bill, will change the conditions and qualifications that were attached to the original legislation recommended by the Governor General. The result from the calculation of any of the formulae may or may not cost the Treasury less money but the manner and the elements used to arrive at such results are certainly new.

The [Chair] would therefore conclude that a Royal Recommendation was appropriate.

As for the honourable Member's concern that the presence of a Royal Recommendation might restrict the opportunities for amendment, it is my view that this should not preclude any honourable Members from moving amendments to clauses of the Bill at committee and report stages subject to our normal rules and practices. In committee, honourable Members can propose amendments to any clauses. If any amendment is thought to be irregular, there is normally opportunity for procedural debate, followed by a decision of the Chairman.

Furthermore, report stage provides another opportunity to put forward amendments. As honourable Members know, there are normally consultations on the selection of amendments as well as on the groupings for debate and division. Any proposed amendment will, however, be subject to our practice that it cannot affect the objects, purposes, conditions or qualifications of the financial initiative.

I wish to thank the honourable Member for Kingston and the Islands for raising this issue and providing the [Chair] with an opportunity to clarify our practice with regard to the Royal Recommendation.

1. *Debates*, March 27, 1990, pp. 9803-6.

CHAPTER 7 — RULES OF DEBATE

Introduction

Through its written rules and practices, the House of Commons has determined not only a procedural framework to allow it to debate and decide legislative proposals, but also the broad outlines for the conduct of Members towards each other and towards the institution as a whole. The Presiding Officers are thus charged with determining, among other issues, when and under what circumstances Members are recognized for debate; the length of speaking time individual Members are granted; proper attire; rules respecting the quoting of documents in debate and references to the “blues”; the application of the *sub judice* convention to debates and questioning in the House; and the civility of remarks directed towards other Members, representatives of the Crown and both Houses. During Speaker Fraser’s term, several decisions touched upon these dual issues of “orderly process” and “decorum” and, taken collectively, can be grouped under the heading “rules of debate”.

When formulating his rulings during this time period, Speaker Fraser took great care to blend long-established practices with an acknowledgement of the modern realities of live television broadcasts. Nowhere is this more evident than in the rulings related to decorum—and, more precisely, the issue of parliamentary language—and to the convention of *sub judice*.

During his tenure, great concern was expressed both in and outside the House about unparliamentary language. There were two aspects to this concern: first, the use of racist and sexist terms and second, the perception that the use of such terms carried no penalty. In late 1991 after a number of incidents, Speaker Fraser, with the co-operation of the House Leaders of the various parties, set up a Special Advisory Committee chaired by the Deputy Speaker to look into the matter of sexist and racist language in the House. This committee presented its report to the Speaker the following year. While the committee’s work did not result in official changes to the text of the Standing Orders, the report and Speaker Fraser’s frequent admonitions urging Members to exercise restraint in their choice of words are credited with having improved the general tone of the House. The importance of the issues of decorum and personal behaviour of the Members during Speaker Fraser’s term dictates that these matters form the bulk of the decisions selected for this chapter.

With respect to the application of the *sub judice* convention, whereby Members voluntarily refrain from making reference either in debate or through motions and questions to matters before the courts, Speaker Fraser took care to explain to the Members and to the viewing public the intricacies of the convention, stressing both its practical and legal aspects. Speaker Fraser acknowledged the difficulties inherent in his role as guardian of free speech in the House, while at the same time attempting to ensure that the rights of those before the courts were not

prejudiced—in other words, his duty to balance the legitimate rights of the House with the rights and interests of the ordinary citizen undergoing the trial. Four rulings on this complex matter are included in this chapter.

Also important, during Speaker Fraser's term the practices respecting the moving of the motion "That an honourable Member be now heard" were clarified, as were certain practices respecting the "question and comment period". The prohibition against quoting from the "blues" was reiterated, and the parameters of proper attire when addressing the House re-affirmed. The issue of the use of a lectern in the House was also adjudicated upon. Decisions on these matters complete the chapter.

RULES OF DEBATE

Order of speakers

Motion that a Member be now heard: receivability; motion moved to allow Member to explain how he would have voted

November 7, 1986

Debates, pp. 1199-1200

Context: On November 7, 1986, under the rubric "Introduction of Bills" during Routine Proceedings, a motion to introduce a bill was defeated on a recorded division. Following a point of order raised by Mr. Marcel Prud'homme (Saint-Denis) to explain why he had abstained from the vote, the Speaker recognized Mr. Steven Langdon (Essex—Windsor). Mr. Svend Robinson (Burnaby) immediately rose on a point of order and attempted to move "That the Member for Spadina (Mr. Dan Heap) be now heard."

The Speaker asked Mr. Robinson to indicate on what Mr. Heap would be heard. Mr. Robinson replied that it would be to explain how Mr. Heap would have voted if he had been in the Chamber, just as other Members had done earlier in the sitting. After hearing from Mr. Prud'homme on the point of order, the Speaker ruled.¹ The ruling is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: Order. The honourable Member for Burnaby has moved a motion. He argues that the motion that an honourable Member be recognized in the place of the honourable Member who has been recognized ought to be accepted by the Chair and that there should be a division, if necessary, in the House. The Chair has considered this practice very carefully. It originated because there were cases in which some Members felt that a particular Member who was recognized ought not to be heard or because a particular Member was not getting a fair chance to rise in his or her place and enter into the debate. These practices go back many years and the time frame in which these rules were made is of great interest to many Members and all historians....

In the case this afternoon there has been no suggestion that honourable Members rising to explain how they would have voted had they been in the Chamber were being precluded from doing so. In fact, it was quite clear that the Chair was recognizing, and properly so, those who wished to give some explanation. However, it is the Chair's view that this practice, historic as it is, originated to protect a Member who might be unpopular or was, for whatever reason, being precluded from speaking. In my opinion, that practice does not

apply to the situation before us this afternoon. As a consequence, I rule that the motion moved by the honourable Member for Burnaby is not applicable in these circumstances.

1. *Debates*, November 7, 1986, pp. 1198-9.

RULES OF DEBATE

Order of speakers

Motion that a Member be now heard: receivability; previously recognized Member had already begun speaking

June 18, 1987

Debates, p. 7305

Context: On June 18, 1987, when the House resumed consideration of a motion to establish a special committee respecting capital punishment, the Speaker recognized Mr. Lorne Nystrom (Yorkton—Melville) for debate. As Mr. Nystrom began his remarks, the Hon. Allan Lawrence (Durham—Northumberland) rose on a point of order to attempt to move “That the Member for Ontario (Mr. Scott Fennell) be now heard.”¹ The Speaker ruled immediately. The ruling is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: The honourable Member has risen and moved a traditional motion that another Member be now heard.

It is important that all honourable Members and the public that is watching understand exactly what this procedure is, because it is a very difficult one for the Chair.

I am going to refer to what the procedural law is in this matter so that there is no misunderstanding. I am referring to a ruling of Speaker Sauvé on October 27, 1983. It is as follows:

Members may on a point of order ask that an honourable Member be now heard as long as no other Member has the floor legitimately. *Beauchesne* states that a motion that a Member be now heard must be moved before the Member recognized has begun speaking. If the Member recognized has simply said “Madam Speaker,” that is enough to be in possession of the House and, therefore, under those circumstances a motion that another Member be now heard is not in order.²

There is always a difficulty for the Chair in these cases, because there is what amounts to a physical contest for the floor. However, in this case, clearly the honourable Member for Yorkton—Melville had begun to speak, and I must advise the honourable Member [for Durham—Northumberland] that he is out of order. The honourable Member for Yorkton—Melville has the floor.

1. *Debates*, June 18, 1987, p. 7305.

2. *Debates*, October 27, 1983, p. 28391.

RULES OF DEBATE

Order of speakers

Motion that a Member be now heard: receivability; Minister previously recognized on a question of privilege

April 27, 1989

Debates, p. 1003

Context: *At the beginning of the sitting on April 27, 1989, the Speaker recognized the Hon. Michael Wilson (Minister of Finance) who was rising on a question of privilege. At the same time, the Rt. Hon. John Turner (Leader of the Opposition) sought the floor also on a question of privilege. As the Speaker noted, he had received six notices of questions of privilege arising out of a leak of budget documents. He indicated that he intended to hear them in the order in which the applications had been received, with that of the Minister of Finance first. Before the Minister of Finance could begin his remarks, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to attempt to move "That the Rt. Hon. Leader of the Opposition be now heard."¹ The Speaker ruled immediately. The ruling is reproduced in extenso below.*

DECISION OF THE CHAIR

Mr. Speaker: The honourable Member for Ottawa—Vanier has moved a traditional motion that another honourable Member be now heard.... In my view, having set out the fact that we have questions of privilege here which take precedence over other things, I think I am bound to proceed as I indicated I would. The honourable Minister of Finance.

1. *Debates*, April 27, 1989, p. 1003.

RULES OF DEBATE

Order of speakers and length of speeches

Mover of a motion not intervening in debate: time limits for second and third speakers

March 19, 1992

Debates, pp. 8480, 8490-1

Context: On March 18, 1992, the Hon. Shirley Martin (Minister of State (Transport)) moved, on behalf of the Minister of Indian Affairs and Northern Development (Hon. Tom Siddon), the motion for the second reading and reference to Legislative Committee B of Bill C-51, respecting water resources in the Northwest Territories. Neither the Minister of State, however, nor any Government Member spoke to the Bill at that time. Mr. Jim Fulton (Skeena) was recognized for debate and spoke until the end of Government Orders for that day.¹

On March 19, the House resumed consideration of the motion for second reading and reference of Bill C-51. When Mr. Fulton completed his remarks, the Acting Speaker (Mr. Charles DeBlois) informed the House that the length of speeches would now be a maximum of twenty minutes with a question and comment period. He reminded Members that although the Minister moving the motion had not spoken, the speaking time of forty minutes was deemed to have expired.²

On a point of order, Mr. Peter Milliken (Kingston and the Islands) rose to point out that the Standing Orders allowed the first two speakers forty minutes each. Even though the next speaker to be recognized (Hon. Bill Rompkey (Labrador)) might not need forty minutes on this occasion, Mr. Milliken expressed concern that this would stand as a precedent. He argued that as the second speaker, Mr. Rompkey should have the option of speaking for forty minutes.³

The Acting Speaker repeated his previous comments, but also indicated he would review the matter. Following Mr. Rompkey's speech and the question and comment period, the Acting Speaker once again addressed the House on this matter. His original and additional remarks are reproduced *in extenso* below.

DECISION OF THE CHAIR

The Acting Speaker (Mr. DeBlois): The Chair was of course careful to check this technical aspect. The first speaker was for the Government and is deemed to have spoken, even if he did not actually do so. The Government presented a motion to table this Bill. So that was the first speaker, and his 40 minutes speaking time has expired, although technically, the 40 minutes were really only 15 seconds.

In any case, I can reconsider and check again with the staff of the House regarding the opinion expressed by the honourable Member for Kingston and the Islands, who is an expert on the Standing Orders of the House. However, this is

the information I have so far. Consequently, I am prepared to recognize, for not more than 20 minutes, the honourable Member for Labrador, even if it means checking again....

Before resuming debate, since the honourable Member for Kingston and the Islands seems to have some reservations about the ruling I gave earlier today that the honourable Member for Labrador was the third speaker and was therefore entitled to not more than 20 minutes, I just want to mention one of the sources on which I based my ruling. I am referring to the *Précis of Procedure* of the House of Commons, Fourth Edition, which says that the Speaker may [...] recognize the mover if the latter so desires, and otherwise any other Member. However, the mover must speak first, if he wishes to speak, because by the very fact of presenting the motion, he is deemed to have spoken—this is important, he is deemed to have spoken—and the Chair will not be able to recognize him again later on.⁴ So even if last night the mover did not speak, according to the Standing Orders he is nevertheless deemed to have spoken because he presented the motion. Technically, the honourable Member for Labrador became the third speaker. I just wanted to add this clarification to the ruling I gave this morning.

*Postscript: On March 30, 1992, during debate on the motion for third reading of a Government Bill, the Acting Speaker (Hon. Steven Paproski) interrupted Mr. Pierre Vincent (Parliamentary Secretary to the Deputy Prime Minister and Minister of Finance), who was under the impression that he was the second speaker. On this occasion also, the Acting Speaker explained to the House that the mover of the motion is deemed to have spoken even though he or she did not actually speak in debate. Therefore, the Parliamentary Secretary was the third speaker and entitled to make a twenty minute speech only followed by a ten minute questions and comments period.*⁵

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1. *Debates*, March 18, 1992, pp. 8451-6.
 2. *Debates*, March 19, 1992, p. 8479.
 3. *Debates*, March 19, 1992, p. 8480.
 4. *Précis of Procedure*, 4th ed., pp. 57-8.
 5. *Debates*, March 30, 1992, p. 9028.

RULES OF DEBATE

Order of speakers

Recognition of independent Members for debate

February 22, 1993

Debates, pp. 16282-3

Context: On February 22, 1993, during consideration of the motion for second reading of Bill C-110, respecting the Northumberland Strait Crossing, Mr. Pat Nowlan (Annapolis Valley—Hants), an independent Member, rose on a point of order. Noting that he had been present in the Chamber from the beginning of the debate and that as a Member from Atlantic Canada he had an unusual interest in the debate on the Bill, the Member questioned the Chair as to why he had not yet been recognized for debate. The Acting Speaker (Mr. Charles DeBlois), while acknowledging that Mr. Nowlan had a particular interest in the Bill, explained that the Chair had to consider the number of Members representing each of the officially recognized parties before giving the floor to an independent Member. Mr. Nowlan pointed out that individual Members and parties *per se* were not mentioned in the rules, and then asked the Chair if the amount of time spent by a Member in the Chamber made a difference as to recognition by the Chair.¹ The Acting Speaker's initial and additional remarks are reproduced below.

DECISION OF THE CHAIR

The Acting Speaker (Mr. DeBlois): I listened very carefully to what the honourable Member for Annapolis Valley—Hants had to say, and I realize he has a particular interest in this Bill which has an impact on the area he represents. When recognizing Members, however, the Chair must consider the number of Members representing each party.

I have been in the chair since the beginning of this debate, and we have now had four Members on the Government side, two Liberal Members and two NDP Members speak to the substance of the Bill. I also recognized the honourable Member twice during the period for questions and comments. In accordance with the traditions of this House, I believe the Chair will again have to give the floor to Members of the recognized parties before switching to an independent Member. That being said, I can assure the honourable Member that I am very much aware of his interest in this debate and that at the first opportunity, I will be delighted to recognize the honourable Member as a speaker on the substance of the Bill....

I do not think there is anything in the Standing Orders about speaking time being allowed on the basis of the amount of time Members spend in the House. I believe I am acting in accordance with parliamentary tradition by giving the floor to Members of the various recognized parties who then speak for a certain time. As for independent Members, I think it is only fair to wait until a certain number of Members have spoken before giving him the floor. That being said, so far I have recognized the honourable Member's special interest in the subject by giving him

the floor several times during the period for questions and comments, and I believe I am entirely fair in recognizing once more the honourable Member for Esquimalt—Juan de Fuca (Mr. David Barrett). And I should be delighted to give the honourable Member for Annapolis Valley—Hants the floor at the earliest opportunity.

1. *Debates*, February 22, 1993, pp. 16282-3.

RULES OF DEBATE

Questions and comments period

Practice with respect to recognition of Members for questions and comments

October 7, 1986

Debates, p. 140

Context: On October 7, 1986, during debate on the motion for an Address in Reply to the Speech from the Throne, Mr. Bill Blaikie (Winnipeg—Birds Hill) rose on a point of order following the speech of the Minister of National Health and Welfare (Hon. Jake Epp) and the following questions and comments period. Mr. Blaikie held that the Chair should have recognized Members on the Government side during the questions and comments period only if there were no Members from parties other than that of the Minister rising to be recognized. In this case, he pointed out that there were two or three Members from parties different from that of the Minister who were rising to seek the floor.¹ The remarks of the Deputy Speaker (Mr. Marcel Danis) are reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Deputy Speaker (Mr. Danis): Without wanting to get into a debate on this matter, and I have discussed that point with the honourable Member for Winnipeg—Birds Hill, it is my view that during the question and comment period the priority should be given to Members of a Party other than that of the speaker, but the priority is not to the point of exclusivity....

I can understand very well the position of the honourable Member for Winnipeg—Birds Hill. That is why in this particular case, after the honourable Minister had finished his speech, I did choose a Member of the Official Opposition first, a Member of the New Democratic Party second and a Member of the Government side third. However, I would be willing to discuss this matter further with the honourable Member and, of course, with the Speaker.

1. *Debates*, October 7, 1986, p. 140.

RULES OF DEBATE

Questions and comments period

Moving of superseding motion following twenty-minute speech: effect on questions and comments period

February 2, 1990

Debates, p. 7780

Context: On January 31, 1990, during debate on an amendment to the motion for second reading and reference to the Standing Committee on Finance of Bill C-62, respecting the Goods and Services Tax (GST), Mr. Jack Whittaker (Okanagan—Similkameen—Merritt) concluded his twenty-minute speech by moving “That this House do now adjourn.” The motion was subsequently defeated on a recorded division and the Acting Speaker (Hon. Andrée Champagne) called for the resumption of debate.

On a point of order, Mr. Ross Harvey (Edmonton East) noted that as the Member had moved his motion at the end of his twenty minutes of remarks, there remained a ten-minute questions and comments period. In her initial comments, the Acting Speaker stated that the point of order left the Chair in a quandary. By moving the adjournment of the House, the Member left the Chair with the conclusion that the Member did not wish to continue debate and, therefore, with the defeat of the motion the Chair had recognized another Member. However, after interventions by a number of Members, the Acting Speaker decided to take the matter under advisement and report back to the House.¹ In the interim, the House resumed debate. The Acting Speaker delivered her ruling on February 2, 1990. The decision is reproduced *in extenso* below.

DECISION OF THE CHAIR

The Acting Speaker (Mrs. Champagne): Last Wednesday, January 31, the honourable Member for Okanagan—Similkameen—Merritt concluded his remarks in debate on second reading of Bill C-62, by moving that the House do now adjourn. That motion was subsequently defeated on a recorded division.

When debate was resumed on the Bill, the honourable Member for Edmonton East rose on a point of order to suggest that the House was still entitled to the opportunity to proceed to the ten-minute questions and comments period on the honourable Member’s speech.

The honourable Member for Churchill (Mr. Rod Murphy) and the honourable Member for Esquimalt—Juan de Fuca (Mr. David Barrett) have argued that the right to proceed with the ten-minute questions and comments period is the prerogative of the House, not that of the Member who has just ended his remarks.

After listening to arguments the Chair deferred ruling on the point of order to check precedents and past practices and then recognized the honourable Member for Calgary West (Mr. Jim Hawkes).

The Chair indicated as well that the House would be allowed the ten-minute period if the point of order raised by the honourable Member for Edmonton East were deemed to be legitimate.

The Chair is now prepared to offer a ruling. According to Standing Order 74(2), following the speeches of Members speaking twenty minutes on the second reading of a bill, a period of ten minutes, if required, is provided for questions and comments. The rule does not mention any qualification which would prevent the House from claiming this ten minutes.

By practice, however, it has been established that if proceedings are interrupted before the ten-minute period is reached or exhausted and the Member is not present in the House when debate is resumed, the Chair will recognize the next Member seeking the floor. It is also true that there have been occasions when Members moved superseding motions that were negatived only to have the House carry on to another Member who was recognized without a claim being made for the ten-minute questions and comments period.

On the other hand the House has frequently claimed its right to the ten-minute period after Members have moved amendments to the motion for second reading or motions to extend the sitting in order to prolong the debate and the claim has not been denied.

However our research uncovered the fact that during second reading debate on a bill on March 14 and 15, 1985, the honourable Member for Vancouver—Kingsway, now Member for Port Moody—Coquitlam (Mr. Ian Waddell), moved the adjournment of the House. The motion was defeated in the ensuing vote. When debate resumed the following day the honourable Member asked for a ten-minute questions and comments period. Speaker Bosley ruled that the fact that the honourable Member had concluded his remarks by moving a dilatory motion did not prevent the House from proceeding with the ten-minute period.²

In the case now under consideration, which is practically a repeat performance of the precedent I have just referred to, the Chair must keep previous practice in mind and allow a ten-minute period when second reading debate on Bill C-62 resumes, if the honourable Member for Okanagan—Similkameen—Merritt is in the House to respond.

The Chair would like to thank all Members for their understanding and for giving the Chair the necessary time to do some research and some reflection on this very technical point before rendering its decision.

Postscript: On February 5, 1990, the House resumed consideration of Bill C-62 with the Chair recognizing the Member for Calgary West for debate. On February 6, the

House once again took up consideration of the Bill at the beginning of Government Orders. On a point of order, the Member for Thunder Bay—Atikokan (Mr. Iain Angus) referred to the ruling of February 2 and, noting that the Member for Okanagan—Simikameen—Merritt was in the House, asked that the questions and comments period for the Member proceed. The Acting Speaker (Hon. Steven Paproski) ruled that since the Member for Okanagan—Similkameen—Merritt had not been in the House the next time debate on the Bill had resumed, specifically on February 5, the opportunity for questions and comments had been lost.³

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1. *Debates*, January 31, 1990, pp. 7661-72.
 2. *Debates*, March 15, 1985, pp. 3060-1.
 3. *Debates*, February 6, 1990, pp. 7883-4.

RULES OF DEBATE

Questions and comments period

Practice with respect to Budget Speech

February 20, 1990

Debates, pp. 8578-9

Context: *On the morning of February 20, 1990, the day on which the Minister of Finance (Hon. Michael Wilson) was to present the Budget, Mr. Nelson Riis (Kamloops) rose on a point of order to ask the Speaker to review the rules governing the presentation of the Budget and to consider whether they provided for a ten-minute questions and comments period following the delivery of the Budget speech by the Minister. Before reserving his decision, the Speaker also heard submissions from other Members.¹*

Following Question Period later that day, the Speaker delivered his ruling which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: This morning the honourable Member for Kamloops raised a point of order concerning the budget presentation which will be delivered later this day. He wished to obtain clarification as to whether or not the questions and comments period which generally applies to Members speaking for twenty minutes should apply to the upcoming speech by the Minister of Finance on the budget.

The honourable Member for Kingston and the Islands (Mr. Peter Milliken) addressed in some detail specific recent precedents and examined carefully the text of the relevant Standing Orders. The honourable Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) reviewed recent interpretations given to the Standing Orders on this issue, as did the honourable Member for Kingston and the Islands. I want to thank all honourable Members for their contributions.

After considering the issue, as I said I would this morning, the Chair is now ready to render a decision. Since honourable Members did present such detailed arguments, I will not review again in detail the precedents cited.

As most honourable Members will be aware, the Standing Orders of the House of Commons concerning the period of questions and comments were first adopted in November 1982, following recommendations by the Special Committee on Standing Orders and Procedure, commonly referred to as the Lefebvre Committee. The Committee suggested that "the amendments to the appropriate Standing Orders be as simple as possible, but that the new debating process be controlled by the Chair",² according to certain guidelines.

The House subsequently adopted amendments to its Standing Orders to incorporate this new procedure. The operative sentence in present Standing Order 84(7) reads:

Following the speech of each Member a period not exceeding ten minutes shall be made available, if required, to allow Members to ask questions and comment briefly on matters relevant to the speech and to allow responses thereto.

While it is true that when this new rule first came into practice in late 1982 it was unclear as to whether or not the question and comment period should apply only to twenty-minute speeches or to the longer speeches as well, there is the precedent on December 9, 1983, where the Speaker stated that according to the rules the ten-minute period could be allowed following the unlimited speeches in the Address debate.³

Just so that all honourable Members will understand that, as well as the public that is listening, it has been the custom to have unlimited time for the Prime Minister, the Leader of the Official Opposition and, out of courtesy, others.

As a courtesy to the Prime Minister and Leader of the Official Opposition, however, the ten-minute period was not used on that occasion. Several subsequent incidents in the House show Members seeking unanimous consent to allow a question and comment period, implying that such consent was a requirement in order to allow this period.

On June 7, 1985, the Chair was called upon to interpret whether this ten-minute questions and comments period should apply to Members who were entitled to speak for more than twenty minutes. The Acting Speaker stated that those who have unlimited time do not have a question or comment period.⁴

No instances could be found in our practice where the question and comment period was allowed following a budget speech. Indeed, our practice since 1984 has been consistent in not allowing a question and comment period following anything but twenty-minute speeches, except by unanimous consent. This interpretation of the rules is now regarded as a practice of the House and the occupants of the chair have conducted themselves accordingly.

I thank the honourable Members for permitting the Chair to clarify the current practice in this matter.

However, the honourable Member for Kamloops presents a valid argument about the fairness to a third party of this and other rules governing speeches. The suggestion has been made, however, that these issues be examined by the Standing Committee on Elections, Privileges, Procedure and Private Members' Business. This might be a course that honourable Members will wish to pursue.

I might also add that I am indebted to the honourable Member for Kamloops for a very succinct argument this morning. If it had not been for the clear evidence of a continual practice in this matter, looking at the words of the order itself and other similar orders that were referred to in the Standing Orders I might well have, if I had been making this decision some years ago, come to a different decision. Perhaps the wording ought to be looked at.

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1. *Debates*, February 20, 1990, pp. 8546-51.
 2. Special Committee on Standing Orders and Procedure, Third Report, p.7:16, tabled in the House on November 5, 1982, *Journals*, p. 5328.
 3. *Debates*, December 9, 1983, p. 45.
 4. *Debates*, June 7, 1985, pp. 5550-1.

RULES OF DEBATE

Decorum

Member's attire: exception to usual practices with respect to an injury

April 5, 1990

Debates, pp. 10242-3

Context: On April 5, 1990, Mr. Pierre Vincent (Parliamentary Secretary to the Minister of Finance) rose to participate in debate while wearing a sweater because of a broken arm. The Speaker made the following remarks.

STATEMENT OF THE CHAIR

Mr. Speaker: Before the honourable Member begins his speech, I think it would be appropriate to explain why he is dressed that way.

I had already received letters from members of the public when I recognized an honourable Member on the other side some time ago who also had a damaged hand and was unable to put on a jacket properly.

I want it clearly understood that the honourable Member is being recognized not because he is deliberately not staying within the bounds of decorum in this House, but because he is an injured Member who, despite the injury, has managed to bring himself to do his duty to the House and to the country.

RULES OF DEBATE

Decorum

Member's attire: practice

May 3, 1990

Debates, pp. 10941-2

Context: On February 15, 1990, the Hon. Charles Caccia (Davenport) was not recognized for debate when the House was considering a Government motion on language rights because, according to the Acting Speaker (Hon. Steven Paproski), he was not properly dressed.¹ On February 19, Mr. Caccia rose on a question of privilege regarding the incident. He claimed that he had been denied the opportunity to participate in debate. He further claimed that because he was not recognized at that time the debate collapsed and the question on the motion was put to the House and agreed to. Other Members wanting to take part in the debate thus missed the opportunity to do so.

Mr. Caccia queried whether the parliamentary institution was well served when dress seemed more important than debate. He asserted that women in the Chamber could dress in a variety of ways according to fashion and he questioned whether the same flexibility could not be extended to men. He asked the Speaker to consider referring the matter to the Standing Committee on Privileges and Elections, and also to provide the House with a ruling for guidance until the Committee had reported.

The Speaker stated the matter had been raised a number of times before. He indicated his concern that because of his dress, the Member could not enter into a debate which was about to collapse. He reserved on the ruling and indicated he would report back to the House and to the Member as soon as it was appropriate.²

On May 3, 1990, the Speaker delivered his ruling which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On Monday, February 19, the honourable Member for Davenport raised a question of privilege because he had not been recognized in debate the previous Thursday, February 15, when the House was considering the motion of the Government on language rights. At the time, the Acting Speaker declined to recognize the honourable Member for Davenport because he was not properly dressed.

The honourable Member has asked the Chair to reconsider its reliance on the traditional interpretation of the practice of the House that required male Members be dressed with jacket and tie. In making his case, the honourable Member pointed to the latitude accorded women Members who can dress, as he put it, "in a variety of ways according to fashions and changing trends".

The honourable Member also quoted the Deputy Speaker who, last December 14, referred to *Beauchesne* and the practice that Members are expected to respect in terms of their appearance.³ The honourable Member stressed, however, that this is a practice and not a rule. This is certainly true, but it is a practice that is well established.

Exceptions have been allowed from time to time, but always within the context of the accepted practice. Clergymen Members have requested the right to wear their distinctive collar instead of a tie and Members who have sustained an injury have asked to be excused from the wearing of a jacket or a tie for short periods of time when it was not possible because of the injury. In this connection I would point to the recent cases involving the honourable Members for Humber—St. Barbe—Baie Verte (Mr. Brian Tobin) and for Trois-Rivières (Mr. Pierre Vincent).⁴

Such exceptions, as I have said, have proved the practice. There have been statements from the Chair supporting the usual practice for more than 60 years and I do not feel that as Speaker, I can disregard this practice.

If the practice is to be changed and if the honourable Member for Davenport wants to see it changed, I would urge him to press his case with the Standing Committee on Elections and Privileges. That Committee has the power to inquire into the rules and practices of the House and can make recommendations to change the rules and practices as they think fit. The House can then determine whether or not such recommendations should be adopted. The honourable Member may wish to consider this approach.

I regret that I am unable to find that the honourable Member has a valid question of privilege.

1. *Debates*, February 15, 1990, p. 8414.

2. *Debates*, February 19, 1990, pp. 8485-6.

3. *Debates*, December 14, 1989, p. 6908.

4. While the incident involving Mr. Vincent is recorded in *Debates*, April 5, 1990, pp. 10242-3, the incident involving Mr. Tobin cannot be located in *Hansard*.

RULES OF DEBATE

Decorum

Use of a lectern

December 4, 1990

Debates, p. 16246

Context: On December 4, 1990, during debate on the motion for the third reading of Bill C-40, respecting broadcasting, Mr. Jim Edwards (Parliamentary Secretary to the Minister of Communications) rose on a point of order to indicate to the Chair that Mrs. Sheila Finestone (Mount Royal) was using a lectern. Mr. Edwards was of the opinion that parliamentary tradition held that the only Member permitted to use a podium was the Minister of Finance during the presentation of the Budget speech.

Mrs. Finestone commented that the Minister of Justice (Hon. Kim Campbell) had recently used the same lectern in the House. The Acting Speaker (Mr. Charles DeBlois) replied that it was possible that another Member had indeed used a podium, and that he was inclined to be tolerant, but that as the matter had been raised, he had no choice but to enforce the practice of the House. He asked Mrs. Finestone to remove the lectern. Mr. Lyle MacWilliam (Okanagan—Shuswap) then asked the Chair if using a stack of books to support notes, as many Members did, amounted to a violation of the rules. He noted that in a number of the provincial legislatures, including the legislature of British Columbia where he had been a Member, lecterns were permitted.¹ The Acting Speaker delivered his ruling which is reproduced *in extenso* below.

DECISION OF THE CHAIR

The Acting Speaker (Mr. DeBlois): You have to understand that, in such cases, parliamentary procedure and tradition are of the utmost importance, and usually honourable Members are allowed extensive material. However, the House has been pretty strict on the use of lecterns, and once again, I am bound by the rules of this House. If the House wants to amend the rules, it can do so, but for now, according to parliamentary practice, only the Minister of Finance can use a lectern to make his speech.

Having said that, the House can make appropriate changes, if it so wishes, but for now, I must stick to tradition, according to which no one can use a lectern to make a speech at the House of Commons, although books and other reading material are allowed.

1. *Debates*, December 4, 1990, pp. 16245-6.

RULES OF DEBATE

Documents: practice respecting use of the “blues”

December 9, 1986

Debates, pp. 1904-5

Context: On November 6, 1986, during discussion on a point of order raised by the Hon. Allan McKinnon (Victoria) respecting petitions, Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) quoted comments of Members who had presented petitions earlier that day.

Later in the discussion, Mr. Marcel Prud'homme (Saint-Denis) drew to the attention of the Chair the longstanding practice in the House that a Member who has not debated a motion or resolution could not get a copy of the preliminary transcript, which is better known as the “blues.” He also pointed out that it was his belief that a Member could not be in possession of the “blues” of another Member's speech until they had been released. He asked the Speaker to rule on this matter.

In reply to Mr. Prud'homme's comments, Mr. Lewis stated that with the benefit of television one could easily recall a particular moment on the television screen and then transcribe what was said. In reserving his ruling on the matter, the Speaker noted the traditional practice with respect to the “blues” and suggested that it was a matter which might necessitate further discussion because of the implications of electronic recording.¹

On December 9, 1986, the Speaker returned to the House on this matter. The text of his ruling is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On November 6, during a discussion on a point of order relating to petitions, the honourable Member for Saint-Denis drew to the attention of the Chair that the Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council was apparently quoting from the “blues”. The honourable Member for Saint-Denis reminded the House of the long established practice that the “blues” are not to be quoted in debate and that the only official report, the *House of Commons Debates* or *Hansard*, can be quoted.

The Parliamentary Secretary pointed out that thanks to television and modern technology, we can now play back a speech or comment, have it transcribed and use it in debate later on the same day.

The Chair is pleased to inform the honourable Member for Saint-Denis that our customary practice was observed by *Hansard*; the “blues” of the honourable Member for Windsor—Walkerville (Mr. Howard McCurdy) or the honourable Member for Winnipeg North Centre (Mr. Cyril Keeper) were not provided by

Hansard to the Parliamentary Secretary or to any other Member. In fact, as we can read at page 1149 of *Hansard* of November 6, during the discussion in the House, the Parliamentary Secretary did not say that he was quoting from the “blues.”

In reviewing this matter, the most recent statement by the Speaker on the use of the “blues” in debate that can be found dates back to December 2, 1976, and that is just before the advent of television in the House of Commons. Speaker Jerome reaffirmed the practice that “blues” should not be quoted in debate.² The logic for not using the “blues” in debate is obvious. The “blues” are the reporters’ notes and often are edited to become the official report. It would not be reasonable to admit into debate galley proofs that tomorrow may indeed be different in their final form. As your Speaker, I feel bound by this practice and will continue to remind honourable Members to refrain from quoting from anything but the official report of the House.

This ruling, however, leaves the House in a difficult position: it is possible for Members to obtain electronically what was said the same day and to use quotes from the electronic medium in debate without identifying them as part of the official report. The dilemma for the House is the following: is the Chair enforcing a practice that has become technologically outdated? By enforcing an outdated practice is the Chair encouraging Members to do indirectly what they are not supposed to do directly? Furthermore, the average Canadian citizen with a video recorder, receiving the House of Commons television signal, can obtain for himself or herself an instant play-back of what was said and by whom. While *Hansard* remains the official record of what was said, the 24-hour delay in its publication no longer satisfies the demand for information by a growingly impatient and technologically literate population.

Consequently, the Chair firmly believes that while maintaining the rule against the use of the “blues”, it is however time for the Standing Committee on Procedures and Elections to review the question of the “blues”, their distribution and the relationship between the official *Hansard* and what has come to be known as the electronic *Hansard*. My predecessors have often requested such a review and, while tempted to do so, I have decided that I ought not to dictate to the House on this question for it is a very important one and I look forward with anticipation to some early direction from the Standing Committee and the House on this matter.

I want to thank honourable Members for their comments, and especially the honourable Member for Saint-Denis, because this is a very important question. I also hope that the Chair’s invitation to have this very important question considered in committee will meet with the approval of the Members of this House.

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1. *Debates*, November 6, 1986, pp. 1147-51.
 2. *Debates*, December 2, 1976, p. 1601.

RULES OF DEBATE

Documents: practice with respect to tabling of personal notes

October 13, 1987

Debates, pp. 9898-9

Context: During debate on the motion for second reading of Bill C-86, respecting the resumption of postal services, the Hon. Harvie Andre (Minister of Consumer and Corporate Affairs) read to the House a list of incidents which had occurred during a labour dispute between the Canadian Union of Postal Workers and Canada Post. Ms. Sheila Copps (Hamilton East) rose on a point of order to request that the Minister table the document from which he had quoted. Mr. Andre indicated that he had read the complete document and Ms. Copps could have his copy if she wished. When Ms. Copps reiterated the requirement for tabling of the document, the Minister indicated that he had been reading from notes prepared for him and that there was no requirement for him to table notes. Other Members also called upon the Minister to table the document he had quoted.¹ The Acting Speaker (Hon. Andrée Champagne) made two comments on the matter. They are quoted in part below.

DECISION OF THE CHAIR

The Acting Speaker (Mrs. Champagne): ... The Honourable Minister has now put the point in a very succinct fashion by stating that they are notes which were prepared for him in order to address the House this morning. A Minister does not have to table personal notes. It will be his decision whether or not to give the Honourable Member a copy of his notes [...]

The Chair at this point is referring to [*Beauchesne*, Fifth Edition] Citation 327 where it states:

327.(1) A Minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the House....

From my understanding of what the Minister has stated, what he is quoting from is not a despatch or a state paper. Henceforth, I see no obligation for the Minister to table the document.

On the other hand, I would ask that the Minister consider making it available to the honourable Member, as the Minister has stated he would.

1. *Debates*, October 13, 1987, pp. 9897-9.

RULES OF DEBATE

Documents: requirement to table document cited; definition of “cited”

April 25, 1988

Debates, pp. 14787-8

Context: On March 28, 1988, following Question Period, Mr. Les Benjamin (Regina West) rose on a point of order to ask the Speaker to check the “blues” to determine whether or not the Hon. John Crosbie (Minister of Transport) should be required to table what the Member described as “rationalization studies of Canadian National Railways regarding the Moncton shops”. He argued that the Minister had cited this document in answering a question posed to him by Mr. Jack Harris (St. John’s East) during Question Period. Mr. Richard Grisé (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) indicated that the “blues” would be checked and that the matter would be brought to the attention of Mr. Crosbie. The Speaker stated he also would review the matter but noted Mr. Benjamin had himself indicated that the Minister had not quoted from the documents.¹

Following Question Period on March 29, Mr. Benjamin rose on a question of privilege to comment further on the matter. He gave several definitions of the word “cite” contained in various dictionaries and, using this as a base, claimed that on three separate occasions the Minister had cited “CN’s studies”. The Member argued that by citing the rationalization studies regarding the Moncton shops, the Minister was required to table these studies. The Member also claimed that the Minister had referred to information contained in these studies. He concluded his submission by suggesting to the Speaker that although his line of thought might be a departure from conventional procedure, a new precedent should be established in this regard.

Mr. Crosbie contended that, in making his response the day before, he did not “quote from any study, letter or document”. He maintained that if he was required by the Speaker to table a document he would have nothing to table. The Minister conceded that he was aware of a study in this area done years ago by CN but in this instance he had quoted no such study. He urged the Speaker to dismiss this request. The Speaker took the matter under advisement.²

On April 25, 1988, the Speaker rendered his decision which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On March 28 and 29, 1988, the Honourable Member for Regina West raised a point of order contending that, in response to a question asked by the Honourable Member for St. John’s East during Question Period on March 28, the former Minister of Transport, now the Minister for International Trade, cited a document when he referred to “CN’s studies” and, therefore, that he should be required to table in the House the rationalization studies of Canadian National Railways [respecting] the Moncton shops.

The Chair is appreciative of the arguments put forward by the honourable Member for Regina West and the Minister's unequivocal response to the point of order.

The rule which guides the House and the Chair on this matter is very clear and precise. It is found on page 433 of *Erskine May's Parliamentary Practice*, Twentieth Edition, and repeated in Citation 327 of *Beauchesne* Fifth Edition, as follows:

A Minister of the Crown may not read or quote from a despatch or other state paper not before the House, unless he is prepared to lay it upon the Table. Similarly, it has been accepted that a document which has been cited by a Minister ought to be laid upon the Table of the House, if it can be done without injury to the public interest.

Beauchesne Citation 327 goes even further:

The principle is so reasonable that it has not been contested; and when the objection has been made in time, it has been generally acquiesced in.

In fact, in their observations, the honourable Member for Regina West and the Minister did not question the rule. They just raised the question as to whether the Minister had actually "quoted" from the "CN studies", thus creating an obligation to table them, according to a recognized and accepted rule and tradition of the House.

The honourable Member for Regina West very ably gave the House several definitions of the words "cite" and "quote" to substantiate his arguments. Though he was very convincing in his approach, the Chair must nevertheless refer to past practice and rulings in determining what interpretation has been given procedurally to those words. Essentially, as there is general acceptance of the rule itself, there is also general unanimity in the interpretation given over the years by various Speakers. For there to be an obligation on the Minister to table a document, it has to have been actually quoted from.

For example, on November 16, 1971, Speaker Lamoureux said as recorded at page 922 of the *House of Commons Journals*:

In fairness, looking at the matter as objectively as I can, I do not see how it is possible for the Chair to make a ruling at this point that a document that has simply been referred to but has not been directly quoted should be tabled in debate. I find it difficult to rule otherwise... If a document has been actually cited or quoted in debate by a Minister of the Crown, it has to be tabled. If only reference is made to it, I do not see how there is an obligation to table it.

Further, on April 8, 1976, as can be found at page 12612 of the *House of Commons Debates*, Speaker Jerome gave the same interpretation when he ruled that the obligation to table a document:

—certainly has never been held to apply to a situation in which a Minister has simply been asked a question about a document and given an answer.

Finally, in a case similar to the one now before the House, Speaker Bosley confirmed numerous rulings by his predecessors when, on November 14, 1984, he said, as reported at page 220 of the *House of Commons Debates*:

It seems to me that when a Minister is specifically questioned about a document and he refers to that document in the course of his reply, it would be difficult to find that he was attempting to influence debate.

Although the honourable Member for Regina West contended that there are reasons to establish a precedent on this point, I do not intend to move away from the uniform interpretations of my predecessors and to give the term “cite” a new procedurally different meaning.

As to whether the Minister actually quoted from a document, the Minister’s statement on March 29 that he has no such study, that he did not quote from any such study and that he has nothing that he could table, stands on its own and, according to our tradition, the House must accept his word.

I therefore must conclude that, since the Minister has not actually quoted from the “CN’s studies”, he is not obliged to table the document in question.

I thank the honourable Member for Regina West for the opportunity to clarify this important aspect of our procedure, but I also say to the honourable Member, having listened very carefully to both the question and the answer and having considered very carefully the argument of the honourable Member for Regina West, I think it might be fair to observe that Ministers perhaps could avoid applications of this kind by being very careful not to leave in the minds of questioners that there may be a document which, naturally, anybody asking questions in the House would seek to have tabled. I thank both the honourable Member and the Hon. Minister for their interventions.

1. *Debates*, March 28, 1988, pp. 14192-3.

2. *Debates*, March 29, 1988, pp. 14246-7.

RULES OF DEBATE

Sub judice: Civil matter: Supply proceedings

June 8, 1987

Debates, pp. 6819-20

Context: On June 8, 1987, on a day set aside for the consideration of the business of Supply, at the beginning of Government Orders, Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) rose on a point of order with respect to the wording of the proposed opposition motion, which had been moved by the Hon. Edward Broadbent (Oshawa) and seconded by Mr. Nelson Riis (Kamloops—Shuswap). He indicated that the proposed motion dealt with two distinct propositions, one on the rights of Canadians in the Yukon and the Northwest Territories, and the second a request for a First Ministers' Conference on Aboriginal Affairs. He expressed his concern that the first part of the motion dealt with the constitutional rights of Canadians residing in northern Canada, a matter then before the courts and therefore *sub judice*. He requested that the motion be split and that the House proceed to discuss the latter part dealing with a proposed First Ministers Conference. Other Members also intervened on the matter.¹ The Speaker delivered his ruling immediately. It is reproduced in *extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: In the interests of not holding up debate, the Chair has decided that, rather than reserve in this matter, the Chair will rule immediately.

In the interests of honourable Members and of the public watching and listening, I want to be sure that everyone understands the issue that has been raised here. It is an issue that is always likely to be raised in the House, especially with respect to a matter being debated here which may be the subject of consideration by the courts.

I would say at the outset that the honourable Parliamentary Secretary raises a matter of concern to honourable Members and a matter upon which the Chair has had occasion to comment in the past. In order to make the issue absolutely clear, I will read the motion. Mr. Broadbent, seconded by Mr. Riis, moves:

That the Government should seek to restore existing rights of Canadians in Yukon and the Northwest Territories to the Constitutional Accord, 1987; and further, to make a commitment to hold a First Ministers' Conference to discuss aboriginal concerns, in particular self-government.

One of the points the honourable Parliamentary Secretary has made is that the view of the Government is, and I think I have his words correctly, that it has not diminished the rights of Canadians in Yukon and the Northwest Territories. That may very well be, but that is of course a matter of debate. However, I have taken the honourable Parliamentary Secretary's point.

The reason that there has been throughout the centuries the admonishment by Speakers, contained in the learned comments on procedure, with respect to debates which concern matters before the courts is of course fundamentally to ensure that the rights of those who are before the courts are not prejudiced. Again, so that all honourable Members and the public will understand, I would like to refer to [Citation] No. 335 in *Beauchesne* Fifth Edition which reads as follows:

Members are expected to refrain from discussing matters that are before the courts or tribunals which are courts of record.

There is no question that in this case the action that has been taken with respect to Yukon and the Northwest Territories is before a court of record. The rule goes on:

The purpose of this sub-judice convention is to protect the parties in a case awaiting or undergoing trial and persons who stand to be affected by the outcome of a judicial inquiry. It is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play.

[Citation] 336 goes on to say:

The sub-judice convention has been applied consistently in criminal cases—

The precedents in criminal cases are consistent in preventing reference to court cases before a judgment is rendered... the convention is applied again when an appeal is launched.

In the view of the Chair, this clearly is not a criminal matter. [Citation] 337 goes on to say:

(1) No settled practice has been developed in relation to civil cases, as the convention has been applied in some cases but not in others.

(2) In civil cases the convention does not apply until the matter has reached the trial stage.

I think it is common knowledge that even were the rule to apply in this particular case the matter has not reached the trial stage.

I also draw to the attention of honourable Members Citation 479(2) of *Beauchesne*. It reads:

The Opposition prerogative is very broad in the use of the allotted day and ought not to be interfered with except on the clearest and most certain procedural grounds.

In this case the issue which has been raised is a matter of public debate and a great deal of comment on both sides. No trial has yet commenced and if indeed it ever comes to trial it will certainly be treated as a civil matter.

Therefore, the case against proceeding with the debate is not strong enough on procedural grounds to move the Chair to set aside [Citation] 479(2), that the use of the allotted day ought not be interfered with except on the clearest and most certain procedural grounds.

Having said all that, I know honourable Members will want to support the Chair in the suggestions and admonishments that I have made in the past with respect to comment on cases before the courts. I have urged honourable Members to be very careful and to extend the principles of fair play, which is the basis of this place. I do want honourable Members to understand that nothing I say in this ruling takes away from the very paramount necessity for all honourable Members to guard with great care the rights of any citizen who may be involved in a court case, most especially, of course, a criminal case, which this is not.

I thank the honourable Parliamentary Secretary for raising a matter which does warrant the consideration of the House and the Chair. I regret that I have not had time, under the circumstances, to give as extensive a ruling as I may have wished to in this case, but under the circumstances this morning the Chair will allow the debate.

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1. *Debates*, June 8, 1987, pp. 6817-9.

RULES OF DEBATE

Sub judice: Civil matter: raised during Question Period

December 7, 1987

Debates, p. 11542

Context: During Question Period on December 7, 1987, Mr. Don Boudria (Glengarry—Prescott—Russell) rose to question the Government about lawsuits and investigations concerning the operation and the disposition of lands by the Canada Lands Company at Mirabel, Quebec. In his preamble, Mr. Boudria stated: "I have in hand a copy of documents in a lawsuit dated September 2, 1987, which has not yet reached trial stage so I understand that under the rules of *sub judice* I can raise the issue." He then proceeded to pose his question about the matter, asking the Government if a Royal Commission of Inquiry would be appointed. The Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) stated that he did not wish to comment as the matter was before the court. In answer to a supplementary question from Mr. Boudria, Mr. Hnatyshyn stated in part: "There is an investigation and I think it would be inappropriate for any member of the Government to comment on that investigation. We should allow the matter to go ahead, uninterrupted and uninhibited by outside influences."¹ When Mr. Boudria requested a further supplementary question, the Speaker delivered a ruling which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I do not think a supplementary would be appropriate at this time, but I want to say something not only to honourable Members but also to the public.

The questions put by the honourable Member for Glengarry—Prescott—Russell were, as I think honourable Members will know, especially experienced honourable Members, extremely careful. The rule is that a civil action is not *sub judice* at least until a trial starts. While that has been a long-standing dictate of *Beauchesne* to which Speakers have referred on many occasions, it still would not prohibit the Chair from making a contrary ruling if, in the total context, the Chair felt the question was about to prejudice the rights of either of the litigants. I did not believe that was the case. The honourable Member quoted from pleadings, which, by the way, honourable Members and the public should know, are all public documents.

The inquiry was on a serious matter. The Government, through the Minister of Justice, as is its right, said it does not want to comment on the merits of the case because it feels it might be prejudicial. The Government has stated there is an investigation going on. We have had carefully drafted questions and we have had replies.

I interrupt Question Period only to make this explanation so honourable Members and the public understand what is appropriate in the Chamber, and that sometimes there is a fine line where something may not be appropriate. I allowed the questions because they were careful and appropriate.

1. *Debates*, December 7, 1987, pp. 11541-2.

RULES OF DEBATE

Sub judice: Criminal matter: raised during Question Period and also during question of privilege; testimony in a court

November 7, 1989

Debates, pp. 5654-6

Context: During Question Period on November 6, 1989, the Hon. Robert Kaplan (York Centre) had begun questioning the Hon. Pierre Blais (Solicitor General of Canada and Minister of State (Agriculture)) on the testimony given by Staff Sergeant Richard Jordan of the Royal Canadian Mounted Police (RCMP) in the course of a criminal trial concerning the leak of certain Budget documents in February 1989. The Speaker had interrupted Mr. Kaplan on the grounds that the question was contrary to the sub judice convention.¹

Mr. Kaplan rose on a question of privilege following Question Period on this matter. He argued that the sub judice convention was not directly relevant here. He suggested that should the Speaker agree, the Solicitor General be allowed to answer the question regarding the testimony. Mr. Kaplan maintained that while the question he wanted to ask did pertain to a criminal trial, it had nothing to do with the guilt or innocence of the person or persons charged. He stated that the question related to the process by which the RCMP laid the charges, which had little to do with the criminal case itself. He submitted that even if the sub judice convention did apply, it should be waived. He remarked that the sub judice rule is based on a voluntary restraint and that the importance of the issue warranted the suspension of the rule. Other Members supported the arguments presented by Mr. Kaplan.

The Hon. Doug Lewis (Minister of Justice and Attorney General of Canada and Government House Leader) argued that the sub judice convention is consistently applied in criminal cases. He also suggested that there was no way of knowing whether anything said either by the person asking the question or by the person responding might affect the outcome of the trial. He was supported in his arguments by another Member.

The Speaker reserved on the matter as he wanted an opportunity to examine the precedents as well as the relevant court proceedings. He asked Mr. Kaplan to obtain a copy of the court transcript.²

The next day, November 7, 1989, the Hon. Edward Broadbent (Oshawa) raised a separate yet related question of privilege which also involved the testimony of Staff Sergeant Jordan. On this occasion, however, Mr. Broadbent suggested that since this testimony was in conflict with the testimony given by the RCMP Commissioner Norman Inkster before the Standing Committee on Justice and the Solicitor General, there had been either a contempt of court or a contempt of Parliament. He argued that, at least, there existed the "possibility" of a contempt of Parliament. Other Members spoke in support of Mr. Broadbent's points.

Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) intervened to state that, like the previous question raised by Mr. Kaplan, this issue was subject to the sub judice convention. Thus, it should not be further discussed until the Speaker had ruled on Mr. Kaplan's question.

The Speaker also reserved on this matter.³

Later on November 7, 1989, the Speaker rose to present his ruling on both Mr. Kaplan's and Mr. Broadbent's questions of privilege just as Question Period was about to begin. His ruling is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: The Chair would ask the indulgence of the House to render a decision on the matter raised yesterday by the honourable Member for York Centre relating to the *sub judice* convention. I realize that this is an unusual time of the day but my decision will, in any case, impact on Question Period and I believe I should inform the House before the Question Period begins.

I should also advise that whatever time is taken to give this ruling will be extended and the Question Period will be the usual 45 minutes in length.

Yesterday the honourable Member for York Centre rose to ask a question which was based on statements made by a staff sergeant of the Royal Canadian Mounted Police in a court of criminal law relating to the budget leak of April, 1989. I said at the time that I appreciated the courtesy of the honourable Member for York Centre in advising the Chair that he was going to rise on the question, and as honourable Members will remember, I decided that it was not appropriate to proceed at that time. I expressed reservations because the matter was before a court of justice and the honourable Member and others agreed to pursue a point of order after Question Period and present their argument that the *sub judice* convention should not apply in this particular case. I want to thank again the honourable Member for York Centre and others for their co-operation on this delicate but important question.

I should first explain the issue that is of concern to the honourable Member so that all honourable Members and the public will fully understand the context in which this matter arises. It is alleged by the honourable Member for York Centre that according to a sworn statement by a witness in a court of criminal law to the effect that the independent responsibility of the Royal Canadian Mounted Police to lay charges in criminal cases has been interfered with and the honourable Member for York Centre wished to put questions to the Solicitor General and wished to have the Solicitor General answer to that specific allegation.

Against this desire to enquire further, the honourable Member is confronted by the convention of this House that, and I quote: "Members are expected to refrain from discussing matters that are before the courts". I might emphasize that that is much more severely applied in the question of a criminal

trial. The reason for this convention is to protect those persons who are undergoing trial and stand to be affected by whatever the outcome of the trial is. I point out that it is also because the trial may be affected by an exchange of debate in this place.

Yesterday the honourable Member for York Centre argued that the convention should be suspended because the process by which charges were laid is, and I quote the honourable Member, “not material to the criminal case now proceeding”.

The Chair has also heard the arguments of the honourable Member for Oshawa and the Minister of Justice and Attorney General of Canada. The honourable Members for Windsor West (Hon. Herb Gray) and Churchill (Mr. Rod Murphy), as well as the Parliamentary Secretary to the Government House Leader, also expressed their opinion on this subject.

I have now since yesterday, reviewed all of the comments offered. I have also reviewed the transcript of the court proceedings, at least up until, I take it, close of court yesterday. My research delved into all of the precedents referred to in Citation 336 of *Beauchesne* Fifth Edition and also the report of the Special Committee on the Rights and Immunities of Members tabled in the House on April 29, 1977, which commented at length on the *sub judice* convention. I point out that while that report was submitted to the House it was never adopted by the House, but I have read the report in its entirety and most of the appendices attached thereto.

The precedents and rulings found in Citation 336 of *Beauchesne* are very convincing. My predecessors, in cases of criminal proceedings, have applied the convention consistently. The British practice which was referred to by the Parliamentary Secretary to the Government House Leader is based on a very specific resolution adopted by the British House of Commons on July 23, 1963. That resolution in the British House gives their Speaker clear guidelines and specific authority. The Canadian House has never pronounced itself in such clear terms and I say to the honourable Member for York Centre that I realize that he was recognizing that fact, at least to some degree, in his argument yesterday.

The Committee did, however, comment on the role of the Speaker at page 1.11 of its report tabled in the House on April 29, 1977. It said:

Your Committee has given consideration to the role of the Speaker in the application of the convention. It is submitted that while there can be no substitute for the discretion of the Chair in the last resort, all Members of the House should share the responsibility of exercising restraint when it seems called for.⁴

Beauchesne Fifth Edition, Citation 339, comments on this part of the report and adds that the Speaker should remain the final arbiter.

In the present criminal case of *Regina v. Normand Belisle, John Appleby and Douglas Small* the defence has put forward a motion for an order staying all proceedings, claiming that there has been an abuse of process. I repeat, the defence has put forward this motion.

A witness has been heard, or at least partially heard, and that specific matter as to what that witness testified and what flows from it has yet to be decided by the court. This obviously is an important step for the defence with considerable consequences for the accused, whatever the court may eventually decide. The issue the honourable Member and other honourable Members wish to raise in the House is the same issue the court is seized of and which that court must decide.

However, the honourable Member for York Centre and others wish to raise the matter in questions to the Solicitor General. The Chair has some difficulty in accepting the argument of the honourable Member for York Centre that such questions would not be material to the criminal proceedings under way where, as I have remarked, the present testimony is in support of a defence motion.

As a consequence, the Chair is unable to accept the argument that somehow the proceedings in this criminal trial can be split into that part to which the convention of *sub judice* applies and another part where it does not apply.

There is no doubt that the House has a fundamental right to consider matters of public interest, but by our convention on matters before the courts the Chair has the duty to balance that legitimate right of the House with the rights and interests of the ordinary citizen undergoing the trial.

Therefore, after reflection on the matter and in the light of the decisions taken by previous Speakers, I have decided that the *sub judice* convention should apply in this case for the time being. The honourable Member for York Centre will have further opportunities to pursue any related issues he may wish, and I include along with the honourable Member for York Centre other honourable Members, when the trial is over

. I will also take this opportunity to rule on the question of privilege raised earlier this morning by the honourable Member for Oshawa. The honourable Member claimed that the evidence given at the criminal trial yesterday by Staff Sergeant Jordan of the Royal Canadian Mounted Police is at variance with evidence given by the Commissioner of the Royal Canadian Mounted Police before the Standing Committee on Justice and Solicitor General in June of this year. Consequently, it was argued that there has been a contempt of this House, or that a contempt of this House may have occurred.

I listened carefully to the arguments that were made and I reserved because the matter appeared on the surface to be linked to the point of order on which I have just ruled. On reflection, however, and in keeping with the House practice, I must find that there is no *prima facie* evidence of a contempt. There appears to be a discrepancy with respect to certain things that were said in two different places,

but it is clearly up to the standing committee to pursue this matter if it so chooses. The Committee is the competent body to review evidence given before it and should report to the House if it finds any breach of its authority. I must say to the honourable Member for Oshawa that it would at least be premature for the Chair to rule now on this matter.

These matters are important and often very complex. They are sometimes even difficult for the Chair.

I wish to again express my gratitude to the honourable Members concerned for their cooperation and their patience.

I also want to express my appreciation for the very helpful and dignified way these arguments were brought to the Chair both yesterday and today. I think we also appreciate the very hard work which was done by our Table Officers last night and early this morning in order to assist the Chair to be able to return and give this ruling as expeditiously as possible.

It may well be that, given the fact that there was a committee report in 1977, honourable Members will want to look at this matter further. I, of course, invite them to do so and in that respect I am very much the servant of this place.

Postscript: The sub judice convention in relation to this trial was raised again on November 20, 1989. In anticipation of an application for an emergency debate, Mr. Kaplan asked the Speaker for a clarification respecting the possible application of the sub judice convention. The Speaker replied that it might be more appropriate to defer discussion of the issue until later in the day. Shortly after, the Rt. Hon. John Turner (Leader of the Official Opposition) sought leave to propose the adjournment of the House pursuant to S.O. 52 (emergency debate) in order to discuss the issue of political interference in the administration of justice particularly with respect to certain RCMP investigations. In making his submission, Mr. Turner also sought to explain that the issue was not bound by the sub judice convention. Mr. Broadbent then rose to state that he had also wanted to propose an emergency debate on the same subject.

Mr. Speaker considered and subsequently dealt with the two matters together. To Mr. Kaplan's point of order, the Chair replied that for the moment at least the ruling of November 7 would apply. To the application for an emergency debate, Mr. Speaker ruled that the matter, although important, did not meet the requirements for an emergency debate.⁵

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1. *Debates*, November 6, 1989, pp. 5592-3.
 2. *Debates*, November 6, 1989, pp. 5603-9.
 3. *Debates*, November 7, 1989, pp. 5627-9.
 4. This report was tabled in the House on April 29, 1977, *Journals*, pp. 720-9. See p. 728 for the extract.
 5. *Debates*, November 7, 1989, pp. 5654-6; November 20, 1989, pp. 5824-30, 5834.

RULES OF DEBATE

Sub judice: Civil matter: reference of a bill to a court

March 8, 1990

Debates, pp. 9006-9

Context: On March 5, 1990, Mr. Nelson Riis (Kamloops) rose on a point of order to ask the Speaker to consider whether the Budget debate should be allowed to continue and whether the House should suspend any proceedings in relation to a bill on notice based on the Government's budget policy. He raised that question given the action taken by the Government of British Columbia to challenge in the courts the Federal Government's decision included in the Budget to cap its contribution to the Canada Assistance Plan. He argued that the adoption of the budget motion and the introduction of the bill then on the Notice Paper would prejudice the appeal. Mr. Riis was of the opinion that the reference of a bill to the Supreme Court withdraws the bill temporarily from the jurisdiction of Parliament and renders the matter sub judice. Other Members intervened on the matter.

The Speaker noted that the sub judice convention had not been as rigorously applied in civil matters as in criminal matters and that he would examine closely the arguments presented by Mr. Riis before reporting back to the House. In the meantime, debate would continue on the budget motion.¹ On March 8, 1990, the Speaker returned to the House with a statement reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On Monday, March 5, 1990, the honourable Member for Kamloops rose on a point of order to suggest that the debate on the budget be suspended and that the Chair review the Government bill currently on notice entitled "An act to amend certain statutes to enable restraint of government expenditures", and determine whether or not the House should proceed with that bill at this time.

In his submission the honourable Member noted that the Government of British Columbia has approached the Court of Appeal to ask for a ruling on the legitimacy of one of the components of the budget, namely proposed changes to the Canada Assistance Plan Act and the responsibility of the Government of Canada under its terms.

He also noted that historically the House has by the *sub judice* convention restrained itself from discussing questions which are before the courts when such a discussion would prejudice the outcome of those proceedings.

In his presentation the honourable House Leader for the New Democratic Party made reference to *Beauchesne* Sixth Edition, Citation 508(4) which states:

(4) The reference of a bill to the Supreme Court of Canada withdraws that bill temporarily from the jurisdiction of Parliament.... The question cannot be before two public bodies at the same time.

He also referred to the ruling upon which this citation is based.

As I indicated on Monday, I have given careful consideration to this reference, the ruling and the proceedings on which this citation is based, that is the citation which was given to me as the basis of the argument put forward by the honourable House Leader of the New Democratic Party. I wish to speak to this in some detail and I will return to it in a few moments.

I would, however, like to thank the honourable Member for his submission. As well, I would like to thank the honourable Government House Leader (Hon. Harvie Andre) and the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier) for their comments. All were helpful to the Chair.

I would first like to make a few remarks concerning the *sub judice* convention and the right of the House to legislate. Then I will deal with the Citation in *Beauchesne*.

It is accepted practice that, in the interests of justice and fair play, certain restrictions should be placed on the freedom of Members of Parliament to make reference in the course of debate to *sub judice* matters and that such matters should not be the subject of motions or questions in the House. Though poorly defined, the interpretation of this convention is left to the Speaker. In Canada, the word "convention" is used as no "rule" exists to prevent Parliament from discussing a matter which is *sub judice*, that is "under the consideration of a judge or court". The acceptance of a restriction is a voluntary restraint on the part of Parliament to protect an accused person or other party to court action or judicial inquiry from suffering any prejudicial effect from public discussion of the issue. While certain precedents exist for the guidance of the Chair, no attempt has ever been made to codify the practice in Canada. Though the First Report to the House of the Special Committee on Rights and Immunities of Members, presented to the House on April 29, 1977, provides some guidance for the Chair, uncertainty still surrounds Canadian practice.

The purpose of the *sub judice* convention is twofold: to protect interested parties in a court proceeding and to maintain a separation and mutual respect between the legislative and judicial branches of government.

In Canada there are some situations in which the application of the *sub judice* convention has been fairly straightforward. All of the principal procedural authorities, including *Erskine May*, *Bourinot* and *Beauchesne*, agree that the convention does not apply to bills as the right of Parliament to legislate must not be limited.

This has been confirmed in the House by a ruling of October 4, 1971. In that ruling Speaker Lamoureux noted that no legal proceeding initiated in a court of law in Canada, be it by way of writ of mandamus or any other writ, should prevent the House of Commons or Parliament from continuing or even initiating the discussion of legislation.²

In that same ruling he also pointed out that should the House take the view that the *sub judice* convention applied to bills, the whole legislative process might be stopped simply by the initiation of a writ or legal proceedings in one or other of the courts of Canada. This, he noted, would place Parliament in an intolerable situation.

Where criminal cases are concerned, the precedents are consistent in barring reference to such matters before judgment has been rendered and during any appeal. As I noted on Monday, I have had to deal with the *sub judice* convention with respect to criminal matters before, and I think that position is quite clear.

Our practices as regards civil cases are less certain, however. The Chair has warned on various occasions of the need for caution in referring to matters pending judicial decisions whatever the nature of the court.

However, on February 11, 1976, Speaker Jerome ruled that no restriction ought to exist on the right of any Member to put questions respecting any matter before the courts, particularly those relating to a civil matter, unless and until that matter is at least at trial.³ This view I reiterated in a ruling given on December 7, 1987.⁴

As the debate on the budget is generally wide-ranging and touches upon all aspects of the Government's budgetary policy, Members are at liberty to debate or not debate whatever aspect of the motion they choose. Therefore I must rule that the *sub judice* convention does not apply in the present circumstances.

In his submission the honourable House Leader of the New Democratic Party made reference to Citation 508(4) of *Beauchesne* Sixth Edition which, as I noted a moment ago, states:

The reference of a bill to the Supreme Court of Canada withdraws that bill temporarily from the jurisdiction of Parliament.... The question cannot be before two public bodies at the same time.

I have to say to the House that having heard that in argument it immediately gave me great difficulty because there sits a statement which, at least on the surface, seems to be clear indeed and seems to be very much in favour of the proposition being put forward by the honourable House Leader. I must say that whatever side of the House one might be on on this question, a Citation like that in *Beauchesne* would I think completely justify the argument being presented to the Speaker.

This Citation is apparently based on a ruling by Speaker Fauteux given on April 12, 1948, at page 344 of the *Journals*. Citation 508(4) is a truncation of Citation 338(4) of *Beauchesne* Fifth Edition, which is itself a truncation of Citation

153 of the Fourth Edition. If Members are having some difficulty with this I assure them so does the Speaker. Truncation is a polite way of putting what could be put in other terms.

I now quote:

The reference of a Bill to the Supreme Court of Canada withdraws that Bill temporarily from the jurisdiction of Parliament. On April 12, 1948, the Prime Minister [the Rt. Hon. William Lyon Mackenzie King] moved that a select committee be set up to consider, *inter alia*, what is the legal and constitutional situation in Canada with respect to human rights and fundamental freedoms. Mr. Diefenbaker moved in amendment that in order to assist the committee, the government submit immediately, to the Supreme Court of Canada such questions as are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press, assembly and the maintenance of constitutional safeguards of the individual are matters of federal jurisdiction. The Speaker said: "This amendment actually proposes that the Supreme Court be asked to consider the same matter that the main motion proposes to refer to a select committee. It seems to me that both those propositions cannot be approved at the same time by the House. If the constitutional situation of human rights is submitted to the Supreme Court it thereby becomes *sub judice* and cannot be considered by the Committee until the Court has given its decision. The question cannot be before two public bodies at the same time. For this reason I feel bound to rule the amendment out of order".

Having reviewed Speaker Fauteux's original ruling and the matter under debate in 1948, I have concluded that there is a serious flaw in the *Beauchesne* Citation in the Fourth Edition which has been compounded in the Fifth and Sixth Editions. That of course refers to the word truncation which I mentioned earlier.

I do not feel that the Citation is at all applicable. As the case before the Speaker in 1948 dealt with a motion and not a bill, I would like to summarize the situation then and set the record straight as regards this Citation in *Beauchesne*.

On April 9, 1948, the House began debate on a motion to set up a special committee to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all member states of the United Nations might best be implemented in Canada. This was the same motion as a resolution passed by the House in the previous session on Monday, May 26, 1947⁵ and was based on a report of that Committee which recommended that a Joint Committee be set up early in the next session to continue the study of this matter.

During debate on the night of April 9, 1948, Mr. John George Diefenbaker proposed an amendment to the motion that the Government immediately submit to the Supreme Court such questions as were necessary to determine to what

extent the preservation of the fundamental freedoms of religion, speech, press, assembly and the maintenance of constitutional safeguards of the individual were matters of federal jurisdiction.⁶

On Monday, April 12, 1948, debate on the motion and the proposed amendment resumed. The Hon. J.L. Ilsley, who was then Minister of Justice, rose on a point of order to challenge the procedural acceptability of the amendment of Mr. Diefenbaker, arguing that since the amendment did not add to the duties, functions or purposes of the Committee but directed the Government to perform a duty, it was a separate motion and not an amendment.

In addition, he also argued that the function of the Committee was to consider what the legal and constitutional situation was in Canada with respect to human rights.

The object of the amendment was to take this function away from the Committee and place it instead with the Supreme Court of Canada. If that reference were made to the Supreme Court, the matter would then become *sub judice* and the Committee would be unable to proceed during the time the matter was to be considered by the Supreme Court. The two proposals could not exist in the same resolution.

In his ruling, Speaker Fauteux accepted the arguments of the Minister of Justice, that the proposed amendment would ask the Supreme Court to consider the same matter that the main motion would refer to a Committee. He stated:

It seems to me that both those propositions cannot be approved at the same time by the House. If the constitutional situation of human rights is submitted to the Supreme Court, it thereby becomes *sub judice* and cannot be considered by the committee until the court has given its decision. The question cannot be before two public bodies at the same time. For this reason, I feel bound to rule the amendment out of order.

As we can see, the emphasis in Speaker Fauteux's ruling was that the amendment proposed by Mr. Diefenbaker was a distinct proposition which should have been dealt with by means of a separate motion and therefore was out of order. The implications in the Citation in *Beauchesne* Fourth, Fifth and Sixth Editions, which casts the problem in terms of the reference of a bill to the Supreme Court, implies that the House is prevented from dealing with legislation on any matter before the courts.

I have no quarrel with the argument that was put on the basis of the Citation. If I had been in the same position as those who had to consider the matter, I most certainly would have taken that Citation and used it as the basis of an argument.

However, this in my view is an extraneous commentary by *Beauchesne*. The wording of the Citation in the subsequent editions compounds the error. In addition, there is a clear contradiction between Citations 338(3) and 338(4) in the Fifth Edition and Citations 508(3) and 508(4) in the Sixth Edition. In the former

citations in both editions it specifically states that the convention does not apply to bills. Citation 338(3) of the Fifth Edition, which is repeated in the Sixth Edition, is based upon the 1971 ruling of Speaker Lamoureux to which I have already referred.

Having examined the precedents carefully and having reviewed the Canadian practice on the *sub judice* convention, the Chair has concluded that there is no legitimate basis for it to intervene as the honourable Member has suggested.

However, I would like to thank all those Members who participated in this discussion, and in particular the honourable Member for Kamloops for raising this most interesting matter and allowing the Chair to clarify these issues. Again, as I have complimented the honourable Member in the past, the argument was succinct, to the point, and very cogent indeed.

I have given this matter a lot of very serious consideration and I hope the House is satisfied with my judgment.

Postscript: *The budget motion was adopted on March 8, 1990. The bill on notice dealing with the Canada Assistance Plan was Bill C-69, An Act to amend certain statutes to enable restraint of government expenditures. The bill was introduced on March 15, 1990, was passed by the House on June 12, 1990, and was passed by the Senate and received Royal Assent on February 1, 1991. In June 1990, the Appeal Court of British Columbia found in favour of the provincial government. The Federal Government appealed to the Supreme Court of Canada and on August 15, 1991, the Supreme Court ruled that the Federal Government had the right to implement its plan to control Federal Government spending by amending the Canada Assistance Plan.*

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1. *Debates*, March 5, 1990, pp. 8767-70.
 2. *Debates*, October 4, 1971, pp. 8395-6.
 3. *Debates*, February 11, 1976, p. 10844.
 4. *Debates*, December 7, 1987, p. 11542.
 5. *Journals*, May 26, 1947, pp. 448-9.
 6. *Journals*, April 9, 1948, pp. 338-9.

RULES OF DEBATE

Decorum

Unparliamentary language: withdrawal of remarks; imputation of motives

October 30 and

November 18, 1987

Debates, pp. 10583-4, 10927-8

Context: On October 28, 1987, during Question Period, the Rt. Hon. Brian Mulroney (Prime Minister), in response to a question, stated in part: "I know that my honourable friends in the Liberal and New Democratic Parties are opposed to the interests of western Canada." The remark provoked a strong response from a number of opposition Members.¹ A number of questions of privilege and points of order, each concerning some aspect of unparliamentary language or acceptable behaviour in the House, arose from the incident.

In particular, the following day, October 29, 1987, the Hon. Don Mazankowski (Deputy Prime Minister, President of the Privy Council and President of the Treasury Board) rose on a question of privilege to claim that remarks attributed in *Hansard* to the Hon. Edward Broadbent (Oshawa) and Mr. Jim Fulton (Skeena) were unparliamentary and, in the interest of preserving the dignity of the House, asked that they be withdrawn and an apology issued. After hearing some brief comments from Mr. Broadbent, the Speaker adjourned the matter for one hour.² Later that day, after making a brief statement, Mr. Broadbent withdrew unequivocally the terminology he had used. Mr. Fulton, despite the urging of the Speaker, did not. The Speaker adjourned the matter "to give the honourable Member time to give the entire matter further consideration."³

During the procedural discussion which followed, a number of other Members, including Mr. Lorne Nystrom (Yorkton—Melville), Mr. Jacques Guilbault (Saint-Jacques), Hon. Robert Kaplan (York Centre), Mr. Nelson Riis (Kamloops—Shuswap) and the Rt. Hon. Joe Clark (Yellowhead), raised a series of issues. Among the most serious issues presented was that of Mr. Nystrom and Mr. Guilbault who claimed that the Prime Minister, by his remarks, had imputed motives to them and thus offended Citation 316 of *Beauchesne Fifth Edition*.⁴

Finally, on October 30, Mr. Fulton rose on his own question of privilege. Indicating that he had received word that morning that the Speaker would not recognize him during Question Period, he was of the opinion that his privileges were thus infringed. He then sought clarification of where Mr. Mazankowski's question of privilege currently stood.⁵

The Speaker addressed some remarks of clarification with respect to Mr. Fulton's situation on October 30, and then on November 18 addressed the points raised in the procedural discussion and most particularly the aspect raised by

Messrs. Nystrom and Guilbault. The remarks of the Speaker on both these occasions are reproduced below.

DECISION OF THE CHAIR

On October 30, 1987:

Mr. Speaker: Yesterday the honourable Member for Skeena took a position with the Chair that he would not withdraw remarks which are clearly unparliamentary, the kind of remarks which are not permitted here, never have been permitted here, and I think the wish of this House is that they will not be permitted here. Having done that, the Chair has one option: the honourable Member could be named and put out of here for a couple of hours. In the opinion of the Chair that is no discipline whatsoever.

Second, I have asked the honourable Member to reconsider his position. I have not put any time limits on it. I should also say that the honourable Member for Skeena is very well and honourably known to me, not only as a colleague here, but personally. I have the very highest regard for the honourable Member. I also think I can have some understanding for his feelings in this matter. However, no individual Member's feelings can take precedence over the rules and traditions of this place.

If the honourable Member wishes to serve his constituents, then he must put himself back in grace in this House.

On November 18, 1987:

Mr. Speaker: I want to deal now with a matter that arose on Thursday, October 29, which is of some importance to the House. On that day the honourable Member for Yorkton—Melville and the honourable Member for Saint-Jacques asked the Chair to review the statement of the Right Honourable Prime Minister made during Question Period on Wednesday, October 28. I refer to *Hansard* at page 10482. The Right Honourable Prime Minister in response to a question said the following:

I know that my honourable friends in the Liberal and New Democratic Parties are opposed to the interests of western Canada. That becomes clearer every day.

That is the exact quote of the latter part of the answer of the right honourable gentleman.

During the procedural debate, the Chair was asked to carefully review that statement in the context of Citation 316 of *Beauchesne* Fifth Edition which states that it is not proper to "impute bad motives or motives different from those acknowledged to a Member".

I have also had the opportunity to review our practice and precedents as well as the whole of the discussion that took place on that difficult afternoon of Thursday, October 29, 1987.

What the Prime Minister said was targeted at Parties in opposition, in a generic sense, and was not directed as a reflection on a specific Member. Some honourable Members may feel that this is a fine line. As your Speaker, I can say with some experience that honourable Members often come too close to the fine line in both questions and answers during Question Period. No one Party has the monopoly on walking the fine line from time to time. There is not an honourable Member here with any experience who does not realize that that fine line can be breached either in the preambles to questions or in remarks made in answers. While it may not be unparliamentary, the experience of this place is that it makes it more difficult to maintain order. Ultimately, of course, in this place what causes disorder eventually will be ruled by someone as being unparliamentary.

However, in keeping with the decisions of my predecessors, I must rule that the statement of the Right Honourable Prime Minister did not violate our rules. There is no doubt that the statement of the Right Honourable Prime Minister was met with considerable emotional responses from both opposition Parties. Indeed, it led to the uttering of some unparliamentary language by some honourable Members. It was clear that some honourable Members were clearly offended by the statement of the right honourable gentleman.

In this first case with respect to the statement of the honourable Member for Oshawa, the Chair adjourned dealing with that matter for one hour, after which the honourable Member for Oshawa returned to the Chamber and corrected his own statement out of respect for the Chair and for the dignity of this House. He did so in the finest tradition of this place.

In the latter case, that of the honourable Member for Skeena, the honourable Member for Skeena expressed his unwillingness to withdraw the unparliamentary expression he had used in view of the Right Honourable Prime Minister's statement and in view of the way he took that particular statement.

The Chair then invited the honourable Member for Skeena again on Friday, October 30, to reflect upon his position and to reflect upon the duty of the Chair and of all honourable Members elected to this House. The House of Commons can only function properly when honourable Members respect and abide by the rules they themselves have set down.

I know perhaps better than many Members in this place that the honourable Member for Skeena is an effective Member of Parliament and has made a considerable contribution to British Columbia, my own province, and has represented his constituents very well indeed. I understand that the honourable Member may have a statement to make to the House. The honourable Member for Skeena.

Postscript: *Following the Speaker's ruling on November 18, 1987, Mr. Fulton rose and offered an explanation of his actions. He withdrew the words he had used which had been found unparliamentary by the Speaker.*⁶

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1. *Debates*, October 28, 1987, p. 10482.
 2. *Debates*, October 29, 1987, pp. 10532-3.
 3. *Debates*, October 29, 1987, pp. 10541-3.
 4. *Debates*, October 29, 1987, pp. 10543-6.
 5. *Debates*, October 30, 1987, p. 10583.
 6. *Debates*, November 18, 1987, p. 10928.

RULES OF DEBATE

Decorum

Unparliamentary language: expression “misrepresent”

September 28, 1990

Debates, pp. 13579-80

Context: *On September 28, 1990, Mr. John Manley (Ottawa South) rose on a question of privilege concerning comments made during Question Period earlier that day.*

In response to a question posed by Mr. Manley regarding the Goods and Services Tax, the Hon. Michael Wilson (Minister of Finance) had commented that the figure quoted was “a deliberate misrepresentation by the honourable Member.”¹ Immediately following Question Period, the Minister of Finance rose on a point of order to withdraw the word “deliberately.” However, he then had asked Mr. Manley to “make sure of his facts before using them in the House.”²

Mr. Manley claimed that although the Minister had withdrawn one word considered to be unparliamentary, he had given the impression that Mr. Manley had nonetheless misrepresented the facts. Mr. Manley then sought clarification from the Speaker as to whether the word “misrepresent” is an acceptable parliamentary term. The Speaker ruled immediately. The decision is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: The issue was first raised by the honourable Member for Ottawa South and raised immediately and properly with the Chair on the question of “deliberately misrepresent.” There is no doubt in my mind that “deliberately misrepresent” is unparliamentary. The question of “mislead” or “misrepresent” may or may not be unparliamentary, depending on the context in which it is used. If it is an argument over facts, that goes on in this place all the time. If it is said, and it may well have been, in the matter that the honourable Member quotes, it may have been said in a context in which the accusation was a very severe one indeed. That is why I caution honourable Members not to just look in *Beauchesne* to see what words have, at one time or another, been ruled as unparliamentary, but to remember that it also has to be considered in the context.

In this case, I understand the honourable Member, who is a conscientious Member in this place, wanting to establish that he did not make this statement carelessly. If the honourable Minister has a view about it which is different than his own, that is a matter of debate. However, the honourable Member has said that he feels that he made that in good faith. The honourable Minister has withdrawn any suggestion that there was any deliberateness on the part of the honourable Member and I think that that is where the matter must end.

Again, it is an example of how careful we do have to be, even in debate, and even in the rough and tumble of exchanges in this place.

1. *Debates*, September 28, 1990, p. 13567.
2. *Debates*, September 28, 1990, p. 13576.

RULES OF DEBATE

Decorum

Unparliamentary language: withdrawal of remarks

October 9, 1991

Debates, p. 3516

Context: *On October 9, 1991, Mr. Jack Shields (Parliamentary Secretary to the Minister of Employment and Immigration) rose immediately following Question Period to withdraw certain remarks. The Member explained that during Question Period in an exchange between the Hon. Bernard Valcourt (Minister of Employment and Immigration) and Members of the New Democratic Party, he had made certain comments which he wished to “categorically and completely withdraw” and for which he apologized to the House.*

*Mr. Steven Langdon (Essex—Windsor) attempted to pursue the matter but was interrupted by the Speaker. The Speaker insisted that since Mr. Shields had withdrawn the remarks the matter was closed.*¹

*Following a point of order by another Member on a separate issue, Mr. Howard McCurdy (Windsor—St. Clair) also attempted to continue debate on the matter. The Member referred to an earlier incident when sexist terms had been used in the House and to the subsequent decision to have a special advisory committee set up concerning those remarks.*² *He also requested that “the House expand the purview of that committee to include racist remarks.”*³ *The Speaker ruled immediately. The essential part of the decision is reproduced below.*

DECISION OF THE CHAIR

Mr. Speaker: The difficulty that I am in—and I am sure that the honourable Member would want to co-operate with the Chair—is that our tradition and our practices are that if somebody has offended this House or offended a Member and said things that are clearly wrong, the responsibility then lies with the House to complain to the Speaker. If something is clearly wrong, the Speaker then orders a withdrawal or the Member can be expelled or the Member may not be recognized for a great deal of time.

The Member in this case, as has been the practice, has apologized. Honourable Members clearly feel very strongly about the matter as perhaps so does the Speaker. I cannot allow, just because this is a hard case and hard cases can make very bad law, that a practice build up of continuing the debate.

If the honourable Member wants to broaden the scope of the advisory committee which has been raised as a consequence of some sexist remarks, I invite the honourable Member to make representations to that effect.

The honourable Member may remember that at the time when we had to deal with that, the Speaker made it very clear that there was more to this issue than just sexist remarks in this Chamber. Decorum does go beyond just sexist remarks. There can be other kinds of remarks that are equally offensive to all fair-minded and reasonable honourable Members.

If the honourable Member wants to make a suggestion to me that this be considered, I will take it up with House Leaders. I ask the honourable Member to co-operate with the Chair and not extend the debate over the actual exchange, which has been withdrawn.

Postscript: Neither the written nor electronic Hansard has any record of Mr. Shields' remarks.

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1. *Debates*, October 9, 1991, p. 3515.
 2. The Special Advisory Committee to the Speaker referred to by Mr. McCurdy was an unofficial committee composed of Members from all the recognized parties and chaired by the Deputy Speaker. It began its study in November 1991 and reported to the Speaker in June 1992. The report was then transmitted to the House Leaders of the parties by the Speaker. No official action was taken on its recommendations.
 3. *Debates*, October 9, 1991, pp. 3515-6.

RULES OF DEBATE

Decorum

Unparliamentary language: sexist and racist remarks

October 10, 1991

Debates, pp. 3562-4

Context: During Routine Proceedings on October 10, 1991, Mr. Bill Blaikie (Winnipeg Transcona) rose on a point of order concerning the use of offensive language in the House. He suggested that whereas the existing rules, practice and custom address the utterance of remarks which might be classed as personal insults directed at individuals, recent incidents of sexist and racist remarks exemplified a new trend of remarks directed at individuals but reflecting on an entire group of people. He asked the Chair to consider if, in cases where the offence extends to a group, the traditional apology and withdrawal of the offensive remark were sufficient. He also asked the Chair to consider the case of offensive remarks made in the House and heard by other Members, but which do not appear in the record of House proceedings.

The Hon. Harvie Andre (Minister of State and Government House Leader) referred to some action he was contemplating with regard to decorum in the House and, more specifically, that he would introduce a motion on this matter and on the power of the Chair to enforce it.

Mr. David Dingwall (Cape Breton—East Richmond) argued that under the Standing Orders, the Speaker is already empowered to deal with Members deemed to be out of order.

Mr. Dennis Mills (Broadview—Greenwood) then rose and took issue with Mr. Andre's remarks, asserting that opposition Members are provoked to heckling and barracking by Government Members, who must share responsibility for the decline of decorum in the House.

Mr. Blaikie concluded by expressing concern that the point he had made with regard to recent racist and sexist offences to groups of people would, inadvertently or otherwise, be overwhelmed by the separate and more general matter of the decline of decorum in the House.¹

The Speaker made some remarks throughout the discussion. His comments are substantially reproduced below.

STATEMENT OF THE CHAIR

Mr. Speaker: The honourable Member for Winnipeg Transcona has raised a matter which I think the House knows is serious. The honourable Government House Leader has referred to the fact that across the country there is an unprecedented mood, at least in current times, of antagonism toward not just

those of us who happen to be elected but to the whole political process. Some of that is manifested by complaints as to what happens in this place.

We have had several incidents recently which I think have given concern to reasonable and decent people in this place, which means the majority of us. The honourable Member for Winnipeg Transcona is raising as a point of order whether or not we are adequately dealing with some of the things that have happened. What he is asking the Chair to do is to consider these matters and perhaps find a way to report back to the House so that we can reach the objectives which most of us wish to not only meet, but to maintain. We must also keep in mind our obligation to this institution, the history of the place, our country and the public....

Let me make it very clear to the honourable Member [Mr. Mills] and to all honourable Members that having been here for many years, there is no particular monopoly of virtue on either side in this assembly when it comes to anything from heckling to something worse. But that is not the point. The point is that when decorum degenerates, it leads to further and further excess and it may very well be that both sexist remarks and racist remarks are a direct result of the state of decorum in general. It is very difficult to disengage completely the one kind of excess from the other.

The honourable Member has talked about provocation. I do not think we need to have a House committee to remind ourselves that there often is provocation in this place and it comes on both sides. There has to be, of course, some common sense to our approach because this place has never been a tea party and strong-minded men and women who believe passionately in things are going to express that passion and conviction from time to time. But certainly I am prepared to try and assist along the lines expressed by the honourable Member for Winnipeg Transcona, the Government House Leader and the honourable Member for Cape Breton—East Richmond....

I thank the honourable Member for Winnipeg Transcona. I understand perfectly well the distinction that the honourable Member is raising and I am very sensitive to it.

At the same time I do ask honourable Members and the public which is listening to keep in mind that the general decorum is also of importance because when that is reduced too far beyond what is acceptable, it leads to other things.

The other thing, and I repeat what I said to my honourable friend from Broadview—Greenwood and other Members, is that this is a tough place. It always has been. That is not an excuse for excess, but it is and it must be remembered that the most precious things and the most vital issues that this country faces are debated here and there will be at times expressions of great commitment, conviction and passion.

I am sure that people will understand that in a free country, provided that those expressions are done in such a way that they do not wound others or bring into indignity the institution itself, that is probably something we have always had and probably something that will continue.

The other thing I want to say to honourable Members is this. What we are discussing are a couple of incidents that only took a few seconds in this Chamber out of the many hours in which debate takes place. It is no secret that most of the time in this place there is not only excellent decorum but the place is relatively calm and there is debate which is seriously proceeding.

I think on behalf of all Members of the House I have to make this statement. Maybe it is a misconception to say that this place is always in excess or even in an uproar because that is not so. There is also no doubt in my mind that the public is asking us to improve.

I might just say to honourable Members, remember many years ago when in order to express our approval of some brilliant move on the part of one of our colleagues or some brilliant criticism we pounded the desks. You will remember that it was shortly after television came into the House that we began, all of us, to receive letters and telephone calls saying that we should stop it.

What stopped it is that one party stopped it and substituted it with applause and within a few days it had ceased. It does not take place any more. That is an example of the House responding to public opinion.

I will not go on any longer because I can see some Members are tempted to pound their desks in approval of what I have just said. That would sort of defeat the example.

I will do the very best I can, in response to the honourable Member for Winnipeg Transcona. I understand exactly what he is saying. I am conscious that it is a serious matter and I shall try to assist the House.

1. *Debates*, October 10, 1991, pp. 3560-4.

RULES OF DEBATE

Decorum

Unparliamentary language: expressions not heard by the Speaker and not recorded in the “blues” nor on electronic *Hansard*

December 12, 1991

Debates, pp. 6218-9

Context: On December 11, 1991, Mr. David Walker (Winnipeg North Centre) rose on a point of order regarding the alleged use of unparliamentary language by the Rt. Hon. Brian Mulroney (Prime Minister). Mr. Walker requested that the Prime Minister, who had left the House, withdraw the remarks that had been heard by many Members on the opposition side of the House. Hon. Harvie Andre (Minister of State and Government House Leader) responded by stating that he was not aware of the remarks concerned and would review the “blues.” Following interventions from other Members, Mr. Nelson Riis (Kamloops) suggested that the discussion be continued the following day should there be no evidence in the “blues” of the alleged language used by the Prime Minister. The Speaker exercised his discretion to close off the matter and deal with it the following day.¹

On the following day, December 12, Mr. David Dingwall (Cape Breton—East Richmond) inquired whether the Chair could bring forth a ruling on the matter when the Prime Minister would be in the House later that day. Mr. Andre rose to deny “categorically and absolutely” the statement attributed to the Prime Minister the day before.

The Speaker indicated that he did not want further debate on the matter. He noted that he had reviewed the official records of the House and they were of no assistance. The Speaker stated that until he had heard from the Prime Minister the matter had not been completely settled. Mr. Andre argued that, since the allegations had been denied, the matter should be closed. The Speaker then stated that if Mr. Dingwall felt the denial of the Prime Minister outside the House was sufficient, then the Speaker would accept it. In response, Mr. Dingwall stated that his party would wait until the Prime Minister returned to the House and addressed the issue. Observations on the status of the “blues”, on the attribution of words to a Member, and on the practice regarding denials were made by other Members. The Speaker then closed off discussion.²

Following Question Period later that day, Mr. Dingwall rose on a point of order to ask whether the Prime Minister intended to make a statement. Mr. Andre again denied that the Prime Minister made the remark in question.³ The Speaker then indicated to the House that he was prepared to give a procedural ruling on the matter which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: The honourable Member for Cape Breton—East Richmond has raised the matter which engaged us yesterday and also this morning. The honourable the Government House Leader has made his position quite clear. I am going to try to deal with the situation we find ourselves in as succinctly as I can.

Yesterday the honourable Members for Winnipeg North Centre, Glengarry—Prescott—Russell (Mr. Don Boudria) and Hamilton East (Ms. Sheila Copps) urged the Chair to review *Hansard* and the electronic tape, alleging that the Right Honourable the Prime Minister had used unparliamentary language and consequently caused disorder.

There were other Members who wished to be heard, but I took the position that I had the point that was raised and I undertook to the House that I would, as they say here, look at the “blues”; in other words review *Hansard* and also the electronic *Hansard*.

This morning when asked by the Opposition House Leader (Mr. Dingwall) I reported that I had reviewed both *Hansard* and the broadcast tape and neither lend any support to the claim or the allegation that the Right Honourable the Prime Minister used unparliamentary language. This morning the honourable Government House Leader asserted the view that the Right Honourable Prime Minister did not utter the words that had been attributed to him.

I ask honourable Members to listen carefully because I am rendering a procedural decision. There is a dispute as to what happened. There have been statements made outside the House of which I am aware, but as is our tradition the Speaker cannot and should not make any ruling based on comments outside the House or in media reports.

In a situation like this, which is not easy, the first condition is: Did the Speaker hear words or a phrase of an unparliamentary nature? I have to say to all honourable Members that the first condition was not met yesterday as the Chair did not hear the alleged utterance.

Honourable Members will say: “Well, why didn’t the Chair hear it?” The Chair cannot hear all comments made in the Chamber. All honourable Members, I am sure, can accept that and know that.

The second condition if the Chair has not heard the words complained of is to verify our records to establish if they are reported by *Hansard* or audible on the recording.

Having done so there is no supporting entry in *Hansard*, nor does the electronic *Hansard* demonstrate that an offending phrase was used by the Right Honourable Prime Minister....

I suggest to the House that is where we are now. I am asking honourable Members to listen carefully. That is where we are now. I suggest to the House that the Chair can go no further. I have done what I was requested to do and I have reported on it. The Speaker has no power to compel any Member's attendance nor can I force any Member to make a statement.

I want it clearly understood that some weeks ago on an unhappy day when a Member was brought to the Bar of this place, it was not done so by the order of the Speaker. It was done so by the order of this House after debate. There is a distinction.

The Chair is faced with a dispute and is unable to resolve it. When the official records are not supportive of the allegations, I am convinced that it is not the duty of the Chair to try to resolve it.

As far as I am concerned from a procedural point of view and in keeping with our conventions the matter is closed.

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1. *Debates*, December 11, 1991, pp. 6142-4.
 2. *Debates*, December 12, 1991, pp. 6167-9.
 3. *Debates*, December 12, 1991, p. 6218.

RULES OF DEBATE

Decorum

Unparliamentary language: expression “traitor”

June 4, 1992

Debates, pp. 11416, 11433

Context: On June 4, 1992, Mr. Gilbert Parent (Welland—St. Catharines—Thorold) rose on a question of privilege regarding comments made by the Hon. Jean Lapierre (Shefford) during Question Period. Mr. Lapierre had called the Rt. Hon. Brian Mulroney (Prime Minister) a “traitor.” (The Speaker had twice asked that the remarks be withdrawn.¹) Mr. Parent noted that such language was completely unacceptable to the House and had to be withdrawn.

Mr. Bill Blaikie (Winnipeg Transcona) intervened to point out that during the exchange between Mr. Lapierre and Mr. Mulroney, the Prime Minister had stated that he was not bothered by such language. However, Mr. Blaikie argued that it is not the responsibility of individual Members to establish what is acceptable or unacceptable and that this incident should not become a precedent. He pointed out that it was up to the House, through the Speaker, to decide and asked that this be established.²

The Speaker then made two statements. The first one was made immediately after Mr. Blaikie’s remarks. The second intervention occurred prior to the recording of a division later that day. Both are reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: Perhaps I can assist the House. I have listened very carefully to interventions from both colleagues who have been in this place a long time.

First of all, I have ruled that the comments that were made are unacceptable and they are unparliamentary and they are to be withdrawn.

Second, if they are not withdrawn, then I shall find my own way to discipline that particular Member.

They are absolutely unacceptable. The honourable Member knows they are unacceptable. If the honourable Member wants to rise in his place and address this Chamber again, the honourable Member is going to have to withdraw.

(Prior to the recording of a division)

Mr. Speaker: There has been a problem during Question Period concerning a statement made by the honourable Member for Shefford. The honourable Member has a long experience in the House of Commons. I have asked him to withdraw his remarks. I think I must ask the honourable Member again to withdraw his remarks.

I would like to ask the honourable Member, who, as I mentioned earlier, has seen many years of service in this place, if after some reflection he would be prepared to withdraw the remarks that were made. I would hope that the honourable Member could find his way clear to do that. I will hear the honourable Member.

Postscript: Mr. Lapierre rose and withdrew his remarks.

1. *Debates*, June 4, 1992, pp. 11413-4.
2. *Debates*, June 4, 1992, pp. 11413-6.

RULES OF DEBATE

Decorum

Unparliamentary language: expression “we were lied to”; naming of a Member
March 24, 1993 *Debates*, pp. 17486-8

Context: On March 24, 1993, during Question Period, Mr. David Barrett (Esquimalt—Juan de Fuca) accused Hon. Harvie Andre (Minister of State and Government House Leader) of lying to the Standing Committee on External Affairs and International Trade which had been studying the North American Free Trade Agreement. When the Member refused to withdraw the allegation, the Speaker requested that he remain in his seat after Question Period so that the matter could be discussed further.¹

After Question Period, the Speaker again asked Mr. Barrett to withdraw his allegation. The Speaker's statements are reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: I wonder if I could return to the matter that engaged us for a moment or two during Question Period. I asked the honourable Member for Esquimalt—Juan de Fuca to remain in the Chamber and I see that he has done so.

I think all of us who are in public life know that there are times when we feel very strongly about issues. That is a good thing, because as I have said many times, this is not a tea party and the long history of this place is that the men and women who vote in our country and in the country from which our institutions came have insisted on sending strong-minded and idealistic people to the House of Commons. We all understand that.

The dispute that took place a few minutes ago no doubt stems from strong-minded views on both sides of the House.

The difficulty is that one could make light of this. I sometimes have said to the many groups of students that come to the House of Commons that the distance between both sides of the Chamber has at least been considered to be two sword lengths. It is an adversarial system, and for better or for worse, we who have inherited it and adjusted it to our own needs have nonetheless maintained it because we believe as we do in our court system, the adversarial system is probably as competent a way of getting at the truth and the facts as has been developed by any civilized people anywhere. It is not the only way and it is obviously not perfect but that is what it is.

However, it only works if we respect the traditions of this place and the rules that we have set for ourselves. That means that conduct in the Chamber has to have some restraints upon it.

I take nothing away, as I said at the beginning of these brief remarks, on how strongly we may feel about things. As your Speaker of course I am all sweetness and light, and kindness and gentleness, and I am not supposed to have a single thought in my head. Perhaps some of you will remember that there were times when I was sitting there that I may have provoked some anguish on the part of a Speaker myself. Most of us have probably been in that position at one time or another.

The point is that the institution and our country has to take precedence over our own anger or our own convictions when it comes to remarks in this place. I have never said that there had to be some kind of antiseptic, absolute order in a place like this. There never has been and I doubt there ever will be unless we just send zombies here. But there has to be reasonable order. When I say reasonable order I say that because without it there is no free speech and that is the fundamental that this place is all about: the right to speak.

If we do not abide by the rules that we set for ourselves, that right to speak will be lost.

The honourable Member for Esquimalt—Juan de Fuca is well and honourably known to me. When I say well-known that implies many things. I know the honourable Member very well. I also know his passion, his convictions and his principles. Along with most decent-minded people in British Columbia, I admire that. I also know that he has had a great deal of parliamentary experience, not just in this place but as premier of my province in the legislature of British Columbia. His contribution to public life has been extensive and no doubt will continue to be.

Now that is as far as I can go in this disputatious place. I think I heard some honourable Member say a moment ago: “Just a minute, Mr. Speaker, you are going to get him re-elected”. That of course is not my purpose.

My purpose is to ask him upon consideration if he could, in the interests of this place and of our traditions, just very quietly say that he withdraws his offensive words and then perhaps we could end that part of the issue. The issue to which he takes such umbrage continues and there are other places to debate it.

I wonder if the honourable Member could assist the Speaker. The honourable Member for Esquimalt—Juan de Fuca.

And Mr. Barrett having addressed some remarks to the House:

Mr. Speaker: I have asked the honourable Member to make his remarks, and I hope that they will be of assistance to the Chair. I want to hear his words. He may have said something which I may not have heard because of comments in the House. The honourable Member.

And Mr. Barrett having continued to address the issue:

Mr. Speaker: Just a minute. It may be that things were said. Whether they were said with the intention to mislead, which is what is necessary in order to amount to a lie, is a matter of opinion. But we cannot use those words here. I am going to ask that the honourable Member consider perhaps for a few hours his position, and I hope that he will find it appropriate to withdraw.

The Right Honourable the Prime Minister.

*And the Prime Minister and Mr. Barrett continuing to address the issue:*²

Mr. Speaker: I have asked the honourable Member to reconsider his position and I have to take it that he has considered his position and is not going to change it.

This is regrettable, I think. But under the rules which we have set for ourselves, this is a situation in which I think now, and the Right Honourable the Prime Minister has probably spoken for most of the Members in this place, we have tried to urge our colleague to withdraw but he is not going to do so. The only sanction that the Chair has, I think under these circumstances, is regrettably to name the honourable Member.

Mr. Barrett, I have to name you for disregarding the authority of the Chair. Pursuant to the authority granted to me by Standing Order 11, I order you to withdraw from the House for the remainder of this day's sitting.

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1. *Debates*, March 24, 1993, p. 17482.
 2. *Debates*, March 24, 1993, pp. 17487-8.

CHAPTER 8 — MOTIONS TO ADJOURN — EMERGENCY DEBATES

Introduction

The Standing Orders provide Members with an opportunity to give their immediate attention to a pressing matter by moving a debatable adjournment motion. The matter must relate to a genuine emergency and, if the request for a debate is granted, the House is permitted to forgo the usual 48-hour notice period. A specific rule governing such requests that the established business of the House be set aside was first formalized in 1906. From October 1986 to November 1988, the operative Standing Order was numbered 29; from November 1988 to the end of Speaker Fraser's term, it was numbered 52.

Pursuant to Standing Order, the private Member or Minister of the Crown seeking the emergency debate must give the Speaker written notice of the matter he or she wishes to propose for discussion at least one hour prior to rising in the House to make the formal request. At the conclusion of the ordinary daily routine of business, any Member who has filed an application with the Speaker rises to ask the Speaker for leave to move the adjournment of the House to debate the issue outlined in the application. The Member then makes a brief statement and no discussion or argument is allowed in the presentation. The Speaker, taking into account the actual text and intent of the Standing Orders, and the weight of practice, then decides on the application.

In the year after Speaker Fraser was elected to the Chair, the rules governing emergency debates changed in a key respect. Prior to June 1987, after the Speaker decided whether the matter could be debated, the *House* still had the authority to refuse to grant leave for the emergency debate. Following amendments to the Standing Orders adopted in June 1987, that procedure was eliminated altogether. From that point, without being bound to give reasons for his decision, the Speaker alone determined whether or not an emergency debate would be held.

During his term, in deciding whether or not the request for the emergency debate should be granted, Speaker Fraser was bound not only by past precedents, but had to take into account the remarks made by Members on the rule on two occasions. On October 7, 1991, Members called for a review of the applicable Standing Order, in terms of text and circumstances and the meaning of emergency; and again on February 4, 5, and 6, 1992 called for a different understanding of the criteria for emergency debates. Speaker Fraser's comments following the February 1992 discussion are included in this chapter.

This Speakership is a period rich in requests for emergency debates: the Speaker had to decide on 149 specific cases. The nineteen decisions in this chapter were selected to demonstrate the operation of the rule: to show occasions when leave was granted and refused; to illustrate the rule that the Speaker is not bound to give reasons for his decisions in this respect; to illustrate Speaker Fraser's attempts to explain the intricacies of this particular rule to the Members and to the public; to illustrate his attempts to determine the general sense of the desire of the

House to participate in an emergency debate; and to clarify peripheral procedural issues, such as the effect of a motion to move to the Orders of the Day on applications for emergency debates, and the issue of renewal of notice.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Application not accepted; does not call for immediate and urgent consideration; guidelines — notice

October 17, 1986

Debates, p. 471

Context: On October 17, 1986, Mr. Steven Langdon (Essex—Windsor) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House for the purpose of discussing the ruling of an American agency with respect to Canadian forestry industry exports. The Member briefly explained the importance of such a debate being held. Speaker Fraser indicated he would return to the House shortly with a decision.¹

DECISION OF THE CHAIR

Mr. Speaker: I indicated to the House that I would try not to delay, overly long, giving a ruling on the application of the honourable Member for Essex—Windsor under Standing Order 29 for an emergency debate relating to the ruling of an American agency with respect to the Canadian forest industry exports.

I also indicated that while I did not receive the minimum notice required by Standing Order 29, there is, in important matters, a discretion allowed the Chair to not see the clock. I extended that courtesy to the honourable Member, and I am sure that the House would approve that that discretion be used sparingly perhaps, but under the appropriate circumstances.

In considering an application of this kind, the Chair must take three factors into account. The issue raised must constitute a genuine emergency. The Chair used that word in the sense that it is something which is of such urgency that it calls immediately for something to be done about it. It is not enough—and I would ask that the honourable Members understand this—that it be a matter of great importance. It is the view of the Chair that the issue is of great importance, but the issue must call for immediate and urgent consideration. The Chair must also take into consideration whether or not there will be other opportunities to debate the matter, and other opportunities within a reasonable period of time.

Under all the circumstances, while the Chair does recognize the great importance to Canada of this matter, the Chair must find that the application does not meet the requirements of the Standing Order.

I do want to thank the honourable Member for proposing the motion and for expressing in explicit terms the reasons for that motion. I thank honourable Members for patiently hearing the Chair's response, and also for patiently listening to the honourable Member who presented the application.

1. *Debates*, October 17, 1986, pp. 466-7.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Application not accepted; debate not urgent; not genuine emergency

January 22, 1987

Debates, p. 2577

Context: On January 22, 1987, Mr. Doug Frith (Sudbury) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House for the purpose of discussing the departure of a Minister from the Cabinet, the integrity of the Government, and its adherence to conflict of interest guidelines. Speaker Fraser indicated he would defer his ruling until later that day.¹

DECISION OF THE CHAIR

Mr. Speaker: I should bring to the attention of honourable Members that an application was made this morning by the honourable Member for Sudbury for an emergency debate. The Chair indicated this morning that this is indeed an important matter and has been the subject of much comment, both publicly and in this Chamber. I am now ready to rule on the application of the honourable Member who applied under Standing Order 29(1) for an emergency debate.

Before I go any further I wish to say that the Chair looks upon this as an important matter. This is not a frivolous application.

In making his application, the honourable Member referred, and I quote from his notice, to “the unparalleled circumstances surrounding the departure from the Cabinet of the honourable Member for Saint-Jean”. He went on the refer to “the probity of the Government’s dealing with contractors and its adherence to conflict of interest guidelines”.

The Standing Order requires that the matter proposed to be discussed must be “specific and important”. The honourable Member’s application appears to raise the following as specific issues: first, the circumstances surrounding the departure from the Cabinet of the Honourable Member for Saint-Jean (Hon. André Bissonnette); second, the probity, or in other words the integrity, of the Government’s dealings with contractors, although that might be assumed, whether the Government was negligent or otherwise in that dealing, and it is broad enough to do so; third, the question of whether the Government adheres to its own conflict of interest guidelines.

In relation to the last issue I think, by clear implication, the application raises the question of whether the Government has adhered to its own conflict of interest guidelines in this particular case, not whether the honourable Member for Saint-Jean himself adhered to them.

The following is important. In the context of this issue the Chair has serious difficulty with a problem that is more than likely to arise in the course of debate. There is an inevitable risk that the debate could focus upon the conduct of the

former Minister. All Members will have noticed during the vigorous questioning which has taken place in Question Period that the Chair has indicated concern owing to the fact that the matter has been forwarded to the Royal Canadian Mounted Police for investigation but that as yet no charges of any kind have been made.

Honourable Members will know that there is a long-standing practice in this House to refrain from reflecting on the conduct of a Member, except by way of substantive motion, of which notice is required, drawn in terms which clearly state a charge of wrongdoing. I think it is appropriate for the Chair to say that since Monday, since the comments from the Chair, honourable Members have taken great pains in framing their questions to avoid impinging on this fundamental precept of justice. I want them to know that this is much appreciated by the Chair.

In determining whether the situation as it exists amounts to a genuine emergency as envisaged by the Standing Order, I must take into account the fact that the following steps have already been taken by the Government. First, the Minister has been removed from office. Second, a police investigation of the matter has been ordered. Third, depending on the outcome of the investigation, the possibility of criminal prosecution has not been ruled out. In fact it has been clearly stated that it is very much something which, depending on the return from the RCMP and its recommendations, will take place. Fourth, and most important, an undertaking has been given that, should the facts contained in the RCMP report warrant further action, then further action will be taken.

In the circumstances the Chair cannot find, despite the importance of this matter, that a genuine emergency exists or that the criterion of "urgency of debate" is met by this application.

I would further point out, as honourable Members and the public know, that the matter has formed the subject of questions during successive Question Periods this week, and will no doubt continue to do so. No Opposition Days have yet been designated in the current supply period, so that a further opportunity for debating the matter in the near future may well be available.

Therefore I must rule that the honourable Member's application does not meet the requirements of the Standing Orders. However, I hasten to say, as I said at the outset, the Chair sometimes receives motions pursuant to Standing Order 29 which the Chair, always courteous, hears out. However, occasionally I think it is important for the Chair to state that some of these applications may be more important than others. The honourable Member for Sudbury has brought a very important matter indeed to this House. However, under the circumstances I think it falls just short of what is required, at least today, in this matter.

1. *Debates*, January 22, 1987, p. 2544.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Application accepted; leave of House granted

January 28, 1987

Debates, p. 2785

Context: On January 28, 1987, the Hon. Edward Broadbent (Oshawa) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House for the purpose of discussing the announcement of an interim agreement with the Government of France concerning additional fishing rights for the French fleet off the coast of Newfoundland.¹ The Speaker ruled on the application immediately.

DECISION OF THE CHAIR

Mr. Speaker: I thank the honourable Member for Oshawa for bringing this matter to the attention of the Chair. The Chair is of the opinion that it is a serious matter of national significance and, under the circumstances, the Chair is prepared to agree that there ought to be an emergency debate under Standing Order 29 on the subject raised by the honourable Member for Oshawa.

Does the honourable Member have leave to move the adjournment of the House under Standing Order 29 for the purpose of discussing a specific and important matter?

Some honourable Members: Agreed.

Mr. Speaker: The Chair takes it that there is unanimous agreement in the Chamber?

Some honourable Members: Agreed.

Mr. Speaker: It is my obligation to advise all honourable Members that the emergency debate will commence at eight o'clock this evening.

Postscript: Following amendments to the Standing Orders adopted in June 1987, the leave of the House was no longer required in order for an emergency debate to take place.

1. *Debates*, January 22, 1987, pp. 2784-5.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Application accepted; leave of House granted

April 27, 1987

Debates, p. 5211

Context: *On April 27, 1987, the Hon. Edward Broadbent (Oshawa) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House for the purpose of discussing the announcement by Dome Petroleum that it intended to accept a corporate takeover by the Amoco Corporation.¹ The Speaker ruled on the application immediately.*

DECISION OF THE CHAIR

Mr. Speaker: The Chair has had time to consider the matter of this application, and it would seem that the application is in order. The Chair is prepared to put the question to the House.

Does the honourable Member have leave to move the adjournment of the House under Standing Order 29 for the purpose of discussing a specific and important matter?

Some honourable Members: Agreed.

Mr. Speaker: The debate will commence at eight o'clock p.m. this day.

Postscript: *Following amendments to the Standing Orders adopted in June 1987, the leave of the House was no longer required in order for an emergency debate to take place.*

1. *Debates*, April 27, 1987, p. 5211.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Application accepted; leave of House granted; guidelines — Speaker not bound to give reasons

April 28, 1987

Debates, p. 5302

Context: On April 28, 1987, Mr. Stan Hovdebo (Prince Albert) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House for the purpose of discussing the situation facing Canadian grain farmers with particular reference to recent decisions by the Canadian Wheat Board and the Farm Credit Corporation. The Speaker ruled on the application immediately, then noted that although the Chair had granted leave, the House had not yet done so. He then agreed to hear some remarks from the Parliamentary Secretary to the Government House Leader (Mr. Doug Lewis). Mr. Lewis pointed out that the Members of the House look to decisions of the Chair as to what truly constitutes an emergency and thus how requests for emergency debates were to be prepared in the future, and mentioned that notice to the Minister concerned would have been helpful.¹ He also indicated he personally disagreed with the decision. The Speaker's decision and comments are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: I have, of course, received notice of the application of the honourable Member for Prince Albert and I find that it meets the requirements of the Standing Order. Does the honourable Member have leave to move the adjournment of the House under Standing Order 29 for the purpose of discussing a specific and important matter?

....

The Chair may be in some difficulty here. The Chair has granted leave, the House has not. This is not a debatable matter, but I will hear the Parliamentary Secretary.

....

Under the Standing Orders this is not a debatable matter. Honourable Members will remember that when this Order was changed there was considerable thought put into it, resulting in the order as it now stands. It is not debatable because the honourable Members of this place who worked this Order out felt that that was not appropriate. Also the intention was expressed at the time that the Chair not give reasons for why it decided to accept an Order. The reason for that was that it was believed by honourable Members that a body of jurisprudence, which would undoubtedly build up on these matters, would lead to a tendency for debate. As a consequence, the Order is as it is.

Having considered the matter and accepted the application the Chair is in the hands of the House. That is why, under the Orders, the Chair, having accepted it, then puts the question to the House.

The honourable Parliamentary Secretary raises another matter, which is not a matter of slight importance at all, that is whether or not the appropriate Minister may be able to be in the House. However, with the greatest of respect, I believe that is a matter which Members will have to work out for themselves.

I think I am bound, as Speaker, to put the question. Does the honourable Member have leave to move the adjournment of the House under Standing Order 29 for the purpose of discussing a specific and important matter?

Some honourable Members: Agreed.

Mr. Speaker: The proposed motion shall stand over until 8 p.m. this day.

Postscript: Following amendments to the Standing Orders adopted in June 1987, the leave of the House was no longer required in order for an emergency debate to take place.

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1. *Debates*, April 28, 1987, p. 5302.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Multiple applications on same sitting day; leave granted — relates to genuine emergency; leave not granted — other opportunities for debate, including Address in Reply to the Speech from the Throne

April 4, 1989

Debates, pp. 40-1

Context: On April 4, 1989, on the second sitting day of the Second Session of the Thirty-Fourth Parliament and thus the first day of debate on the Address in Reply to the Speech from the Throne, the Speaker received three written notices of the intention of Members to rise pursuant to Standing Order 52 to ask for leave to move the adjournment of the House. The Speaker recognized Mr. Iain Angus (Thunder Bay—Atikokan) first. Mr. Angus, supported by Mr. Don Boudria (Glengarry—Prescott—Russell), sought an emergency debate on the issue of aviation safety in Canada. The Speaker reserved his decision. The Hon. Ralph Ferguson (Lambton—Middlesex) then sought an emergency debate on the jurisdiction of the Canadian Wheat Board. The Speaker reserved his decision on this application as well. The Speaker then recognized Mr. Jim Fulton (Skeena) who sought an emergency debate on the oil spill from the oil tanker, the Exxon Valdez, in Alaska.¹ The Speaker indicated he would consider each of the applications and return to the House later that day.

DECISION OF THE CHAIR

Mr. Speaker: I advised the House that I will return with respect to the matters raised this morning which received very careful attention indeed....

I received applications for emergency debates under Standing Order 52 relating to three separate items: the matter of aviation safety, the removal of oats from the jurisdiction of the Canadian Wheat Board, the oil spill outside the Port of Valdez.

Let us deal first with the question raised by the Member for Glengarry—Prescott—Russell and the Member for Thunder Bay—Atikokan on air safety.

First I should like to quote from page 18 of *Hansard* for February 18, 1972 when Mr. Speaker Lamoureux stated:

I believe honourable Members will recognize that it would not be easy to justify adjournment of the House under Standing Order 26 at the very moment when we have before us the debate on the Address in Reply to the Speech from the Throne...

The reason for this caution on the part of Speaker Lamoureux, and indeed other Speakers in the past, is that during the Throne Speech debate it is an easy matter for Members to debate subjects over a wide area and it is difficult, therefore, to meet the criteria required for an emergency debate under Standing Order 52(5) which states:

In determining whether a matter should have urgent consideration,...the Speaker shall have regard to the probability of the matter being brought before the House within reasonable time, by other means.

If I may repeat the last sentence, I must have regard, and I quote:

to the probability of the matter being brought before the House within reasonable time, by other means.

In the case of air safety, and also the case of removal of oats from the jurisdiction of the Canadian Wheat Board, where the matter may be brought before the House by other means, I do not find that the criteria of Standing Order 52 have been met, and I will not therefore allow an emergency debate at least at this time.

However, in relation to the matter raised by the honourable Member for Skeena, I do find the criteria of Standing Order 52 have been met. The matter proposed for discussion does relate to a genuine emergency, calling for immediate and urgent consideration.

I therefore set the matter of the oil spill outside the Port of Valdez down for debate at 8 p.m. this evening.

1. *Debates*, April 4, 1989, pp. 12-3.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: Speaker not bound to give reasons for decision; leave not granted

September 22, 1987

Debates, pp. 9172-3

Context: On September 22, 1987, Hon. Robert Kaplan (York Centre) rose for the second time¹ within a week pursuant to Standing Order 29 to ask for leave to move the adjournment of the House to discuss the crisis in public confidence in the Government's ability to maintain national security and a satisfactory security and intelligence service.² The Speaker ruled immediately on the application.

DECISION OF THE CHAIR

Mr. Speaker: I listened very carefully to the honourable Member for whom the Chair has great respect, especially on these matters. I am very conscious of the fact that a few days ago a similar motion was made and at that time the Chair did not accede to it.

The reform committee, in dealing with matters of emergency debates, was very clear in the fact that in its wisdom it was not appropriate for the Speaker to give reasons for either allowing an emergency debate or rejecting one. The wisdom of that committee lay in the fact that any reasons the Speaker gives from time to time builds up a kind of jurisprudence of its own and becomes the subject of debate in the Chamber. As a consequence, tempted though I may be to give reasons, I will follow the wisdom of the reform committee and not do so.

However, I draw to the attention of all honourable Members the following words in the rule.

The right to move the adjournment of the House for the above purpose is subject to the following conditions:

(a) the matter proposed for discussion must relate to a genuine emergency, calling for immediate and urgent consideration;

I have commented at another time on what is an urgent consideration.

The honourable Member certainly proposes a matter of extreme importance, but I am not satisfied today that it is a matter of urgency. As I said to the honourable Member when he rose and put forward a very precise and cogent request a few days ago, in deciding that it is not appropriate at this time does not mean that the door is closed. This is a matter of ongoing importance to the entire

country. Most certainly there may be circumstances under which it would be appropriate for the honourable Member or other honourable Members to raise the matter again.

1. *Debates*, September 17, 1987, p. 9022.
2. *Debates*, September 22, 1987, p. 9172.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: Speaker not bound to give reasons for his decision; not in order for Members to reflect on decision; leave not granted

May 29, 1990

Debates, pp. 11980-1

Context: On May 29, 1990, Miss Deborah Grey (Beaver River) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss the constitutional crisis which was building in Canada. The Speaker ruled immediately and denied the application. Mr. Alex Kindy (Calgary Northeast) rose to comment on the Speaker's ruling. The Speaker reminded the Member that it was not appropriate to argue with a Speaker's ruling on the decision on an emergency debate.¹ The initial decision and the Speaker's additional remarks are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: The honourable Member for Beaver River has applied under Standing Order 52 for an emergency debate on a matter which I am sure all Members of this House agree is a very important one.

However I must point out that the matter is being raised on a daily basis. The honourable Member has another course to follow by which she could debate the matter.

As a consequence, today I am not inclined to grant her application. It has nothing to do with whether or not the matter is serious. We all know it is serious. At this time, and I say at this time, I think it would be inappropriate.

I thank the honourable Member for giving me notice, and I thank her for her intervention.

....

Order. I must interrupt the honourable Member for Calgary Northeast. It is not appropriate to argue with the Speaker's ruling.

At the time the reform committee considered the whole question of applications for emergency debate, it was recommended that the Speaker give no reasons at all.

All that the Speaker did in this case is remind honourable Members that the matter has been raised continually, which of course it has been, and that there is for the honourable Member another approach to the matter.

I have great respect for the honourable Member, but he is not in order in arguing with the Speaker on an application for an emergency debate.

1. *Debates*, May 29, 1990, p. 11980.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: Speaker not bound to give reasons for his decision; leave not granted — other opportunities for debate

October 1, 1990

Debates, pp. 13633-4

Context: On October 1, 1990, Mr. Lorne Nystrom (Yorkton—Melville) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss the events surrounding the nomination of eight additional persons to the Senate of Canada. The Speaker interrupted the Member to note that applications for emergency debates must be brief, concise and to the point.¹ After Mr. Nystrom completed his remarks, the Speaker delivered his ruling which included observations on a reform committee's recommendations that Speakers not give reasons for denying any requests, and further comments on the elements a Speaker must consider when ruling on applications for emergency debates.

DECISION OF THE CHAIR

Mr. Speaker: I have been considering for some hours the application of the honourable Member. I assure the honourable Member that I have given it a great deal of consideration.

The point I am making at this moment is that applications for emergency debate should be brief, concise, and to the point. There is a reason for that. If the discussion strides into debate, under the Standing Orders, no other Member in the Chamber can rise. That creates a situation in which one person has the floor, gets into debate, and there may be very grave differences of opinion as to what is being debated, but no other Member can rise on the matter.

That is why we have the order and I know that the honourable Member for Yorkton—Melville understands that. I would ask him to complete his remarks very briefly.

....

Honourable Members will remember that when the reform committee was dealing with the rules of this place, one of the recommendations was that a Speaker not give reasons when an application for an emergency debate was turned down. I have tried to follow that admonition most of the time. However, sometimes it is important that the public which is watching and listening understand something about what goes on in the Speaker's mind when trying to assess whether or not it is appropriate to adjourn all other business of the House and go into an emergency debate. One of the things that guides the Speaker is if there are any other avenues open to raise the issues which would be debated if there was an emergency debate.

The honourable Member knows that the matter he raises has been the subject of comment in this House and in Question Period, and there will be further opportunities in the next number of days to raise the matter.

If an emergency debate is turned down, it does not mean that the matter is not an important matter. Many matters here are important but they do not all, under the circumstances at any particular time, warrant adjourning the other business of the House to debate that matter.

I would ask the honourable Member to understand that it would not be appropriate at this time to go ahead with the application. The honourable Member does know that there are other avenues open to him to bring that matter to the House and, of course, to the Government.

I thank the honourable Member for giving me advance warning and especially the detail with which his letter dealt with the matter. It gave me a great deal of assistance and helped me to make the decision.

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1. *Debates*, October 1, 1990, p. 13633.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: Speaker not bound to give reasons for his decision; leave not granted

October 5, 1990

Debates, pp. 13871-2

Context: On October 5, 1990, Mr. Nelson Riis (Kamloops) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss a series of events then taking place in the Senate of Canada, and their effect on the functioning of the Parliament as a whole. The Speaker heard as well remarks by Mr. Jean-Robert Gauthier (Ottawa—Vanier) who had also given notice on the same matter, and who supported Mr. Riis' application for a emergency debate.¹ The Speaker responded to both applications at the same time in an extended ruling which is reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: I am going to respond to both of these applications and I am going to say more than perhaps the Speaker usually does on such applications.

I am very conscious of the fact that the reform committee some time ago recommended that no reason should be given by the Speaker when responding to these applications. As I had to do a few days ago, I am going to give some indication of my approach to this.

First, as anyone who is watching this place today knows, there is very grave concern here in this Chamber about events in the other place. Within the bounds of the rules that we have to govern us, there has been extensive comment today.

The question is whether it would be appropriate to have an emergency debate today with respect to those events. I have given this very careful consideration today because I have had notice. I am inclining not to accept the applications of the two honourable Members at this time, not because this is not a serious matter, but because it is probably appropriate to see if the other place can sort out its difficulties.

I am very conscious that in turning down an application for an emergency debate there must be no confusion in the minds of the public that hears the application and hears my answer that that rejection is necessarily for all time or that it ignores the seriousness of the matter raised.

I know honourable Members will understand that it is not particularly easy in a situation like this for the Speaker of the House to make this ruling but I think that today, given events as they presently are, it would be appropriate to see if the other place can resolve its difficulties.

I thank both honourable Members for giving me notice. I have taken their applications very seriously.

1. *Debates*, October 5, 1990, p. 13871.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Leave not granted; repetition of requests; Speaker's indication that circumstances could change; matter of importance, does not necessarily merit emergency debate

September 24, 25, 28, 29, 30, 1987

Debates, pp. 9266, 9346-7,
9368, 9421-2, 9498

October 1, 2, 1987

Debates, pp. 9522, 9608

Context: On September 24, 1987, Mr. Steven Langdon (Essex—Windsor) rose pursuant to Standing Order 29 to ask for leave to move the adjournment of the House to discuss the suspension of the Canada-U.S. free trade negotiations. The Hon. Lloyd Axworthy (Winnipeg—Fort Garry), having given notice of intention to rise on the same matter himself, spoke in support of Mr. Langdon's application.¹ Over the next six sitting days,² the two Members persisted in their attempts to be granted leave for an emergency debate on this matter, and they were joined in their efforts to obtain an emergency debate by the Members for Oshawa (Hon. Edward Broadbent) and Ottawa—Vanier (Mr. Jean-Robert Gauthier). On each occasion, the Speaker listened carefully to the arguments presented and considered them in light of what were ever-changing circumstances. The series of decisions on this matter are reproduced in part below.

DECISIONS OF THE CHAIR

On Thursday, September 24:

Mr. Speaker: I want to thank both the honourable Member for Essex—Windsor and the honourable Member for Winnipeg—Fort Garry for bringing the matter to the Chair's attention yesterday and for their comments this morning.

As honourable Members know, the reform committee insisted that it was inappropriate for Speakers to give reasons for their decisions on these applications. I might say to honourable Members that that does not mean that within the head of the Speaker there are no reasons. Naturally, these decisions are not made on a whimsical basis.

I have given this matter a great deal of consideration and I agree with both honourable Members that the issue is of extreme importance. At the moment it is not my disposition to order an emergency debate for today, but that does not mean it might not be ordered at some other time. I think it is fair to say that I might be in better position to consider the matter again after today's proceedings.

On Friday, September 25:

Mr. Speaker: I want to express my appreciation to the honourable Member for Oshawa and to the honourable Member for Winnipeg—Fort Garry in raising again today an important matter. I do not think there is any question but that it is

considered important, not only by honourable Members in this place and the Government but, of course, by the public.

Yesterday I said, and I quote:

I have given this matter a great deal of consideration and I agree with both honourable Members that the issue is of extreme importance. At the moment it is not my disposition to order an emergency debate for today, but that does not mean it might not be ordered at some other time. I think it is fair to say that I might be in a better position to consider the matter again after today's proceedings.

Later, in response to a point of order raised by the honourable Member for Winnipeg—Fort Garry who was seeking some elucidation of my earlier comments, I said:

The representations of the honourable Member are, of course, important. I said earlier that as of 11 o'clock this morning it was not the disposition of the Chair to order an emergency debate to take place today. I think I made it clear to representatives of both Opposition parties that that does not close the door to other applications at another time. If the honourable Member or other honourable Members wish to make other applications, the Chair will, of course, consider them.

I have again given serious consideration to the applications which have come in from both the Official Opposition and the New Democratic Party, and I must remain of the same view as I was yesterday, that I am not at the present time disposed to order an emergency debate.

This is an ongoing matter and, as I indicated yesterday, events may change and I may be disposed at another time to take a different position.

I hope all honourable Members and the public that is watching and listening to this will realize that a matter can be of very great importance, but it may not necessarily be deemed appropriate by the Chair for it to be debated in an emergency debate.

I see that the Deputy Prime Minister (Hon. Don Mazankowski) is here, as are the Leader of the New Democratic Party and very senior representatives of the Official Opposition. I would say to all of them that there are other means by which this matter might be debated. I would suggest that they might have certain consultations among themselves in that regard.

Again, my disposition today should not be taken as saying that this particular subject might not at some later time be the subject of an emergency debate.

On Monday, September 28:

Mr. Speaker: As the honourable Member has pointed out, this is the third day in a row that applications have been brought to the Chair for an emergency debate on

the trade talks. I should make it very clear that last week both Opposition Parties applied. This morning the application came from the Official Opposition only, but I think it can be taken that members of the New Democratic Party continue with their position that if I were to rule in favour of an emergency debate it would be appropriate and it would be welcomed by them.

However, as I said last week, while the matter is of very great importance, something with which all honourable Members, no matter what their views on the issue, would agree, it is not the disposition of the Chair at this time to put this matter in the category of one necessitating an emergency debate.

On Friday I invited the Deputy Prime Minister and the House Leaders to discuss this matter among themselves on an early occasion with a view to making arrangements for a debate to take place in this Chamber on another basis. I repeat that invitation because, as I say, the matter is important.

I have no criticism at all of the honourable Member for Winnipeg—Fort Garry or other honourable Members who have brought the matter to the attention of the Chair. It is important, but it is not the disposition of the Chair to say that it crosses that sometimes difficult line between what is very important and what requires an emergency debate.

Again, I say to the honourable Member for Winnipeg—Fort Garry that that is my disposition today. That does not mean that something might not happen to change my mind....

On Tuesday, September 29:

Mr. Speaker: In the interest of all honourable Members and also in the interest of the public that is watching and listening, I emphasize again that while a matter may be of very great importance it may not, in the opinion of the Chair, be a matter which on any given day is appropriate for an emergency debate.

The public should know that there has been a series of applications by both the Official Opposition and the New Democratic Party each day asking for an emergency debate. The Chair has declined each day to order an emergency debate but on each day has stressed that the matter is of great importance.

There is generally an admonishment to the Speaker not to give reasons for decisions and I have refrained from doing that, although honourable Members will know that what goes on in the Speaker's head probably has something to do with what the Speaker says. I would like to be able to say that of all honourable Members.

The suggestion this morning is that I might defer both of these applications until later on this afternoon to see what may happen later today. I think the better practice would be for me, with great politeness and courtesy, to reject the applications at this time. As I have said repeatedly, that fact, of course, does not prevent anyone from making another application at another time.

I want to say one thing which I think may be helpful. The suggestion has been made that the Speaker has very generously agreed to review the Speaker's rulings on the emergency debate each day. For the record it should be noted that the Speaker is not reviewing past rulings. The Speaker is taking each application as it is made on each given day. I think that is proper procedure.

I point out again that although a matter may be very important it may not be appropriate, in the Speaker's view, to order an emergency debate. I want to make it very clear that the Speaker certainly views the matter as important. We will see what transpires.

Members will note that last week I suggested there might be some conversations among the Government, the Official Opposition and the New Democratic Party with regard to another way of having a debate. It is not for me to direct anyone in this House as to what they might do in speaking with each other. However, that may be something which could be considered.

In any event, that is the ruling for this morning. I thank honourable Members for bringing the matter to my attention. I also want to thank both Opposition representatives for their patience in accepting with good grace the Speaker's rulings in these matters.

On Wednesday, September 30:

Mr. Speaker: Perhaps I can do something which I felt I had to do many months ago, that is, dispel any honourable Members from thinking that just by the numbers of people rising they are necessarily going to persuade the Chair that it is an emergency....

The honourable Member does know that the application that he brings with respect to an emergency debate on the trade talks is a matter that is viewed with great seriousness by the Chair, and I am sure by all honourable Members in this place. The application has to be made directly. The honourable Member will realize, for the reasons I set out, that under the rules the Government is not given any permission or right to reply, the honourable Member will make his statement very briefly and not in an argumentative fashion. I can assure the honourable Member that the Chair understands his position very well....

....I have the honourable Member's point and I am again today not of a disposition to grant an emergency debate tonight.

I say again that that does not mean that the honourable Member and other honourable Members are precluded from bringing applications another time. For now, for the reasons, as I mentioned yesterday, which I have in my head and do not always allow out of my head, today there will be no emergency debate. However, that does not mean that there might not be one at some further time.

On Thursday, October 1:

Mr. Speaker: I thank the honourable Member for Ottawa—Vanier for bringing this matter to the Chair's attention. As I have said repeatedly for some days now, the Chair views it as an extremely important matter. As yet, however, it has not been the disposition of the Chair to order an emergency debate.

I say again to the honourable Member that that does not preclude the Chair from having a different view at a different time. For today, however, it is not the disposition of the Chair to order an emergency debate for tonight. I repeat that the Chair knows that it is an important matter.

On Friday, October 2:

Mr. Speaker: I want to thank the honourable Member for Ottawa—Vanier for his comments. As I said on previous days, this is of course a very important subject but, considering the present circumstances, the Chair is reluctant to agree that a debate is urgently needed this afternoon.

I know the honourable Member will understand that the Chair's decision does not in any way overlook the importance of the issue, but perhaps Monday or some other day, there will be another opportunity when a debate would be appropriate. Today, however, the Chair does not feel that is the case.

Postscript: On Monday, October 5, 1987, the Rt. Hon. Brian Mulroney, Prime Minister of Canada, rose under "Statements by Ministers" under Routine Proceedings to inform the House that an agreement in principle had been concluded for a comprehensive trade agreement between Canada and the United States, and to table a document containing the elements of the agreement.³ Later that day, Mr. Broadbent and Mr. Axworthy rose again to seek an emergency debate on the agreement in principle, but that application was denied as well.

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1. *Debates*, September 24, 1987, pp. 9265-6.
 2. *Debates*, September 25, 1987, pp. 9346-7; September 28, 1987, p. 9368; September 29, 1987, p. 9421; September 30, 1987, pp. 9497-8; October 1, 1987, p. 9522; October 2, 1987, p. 9608.
 3. *Debates*, October 5, 1987, pp. 9641-2.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Leave not granted/leave accepted; repetition of request on consecutive days

December 13, 14, 15, 1989

Debates, pp. 6876, 6916, 6941, 7003

Context: *On December 13, 1989, Mr. Francis LeBlanc (Cape Breton Highlands—Canso) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss recent and anticipated fish plant closings in the Atlantic fishery.¹ The Speaker denied leave for the emergency debate. The following day, December 14, 1989, Mr. LeBlanc once again sought an emergency debate on this matter;² and leave was again denied, on this occasion by the Deputy Speaker. On December 15, 1989, Mr. LeBlanc once again sought an emergency debate on this matter and leave was granted by the Speaker.³ The decisions of the Chair Occupants on those three days are reproduced below.*

DECISIONS OF THE CHAIR

On December 13, 1989:

Mr. Speaker: The honourable Member for Cape Breton Highlands—Canso has raised a matter in which he is petitioning the Chair to set aside the ordinary business of the day and proceed to an emergency debate on an issue which is a very serious one.

I think all honourable Members can understand perfectly why the honourable Member, coming from that part of the country, is raising this matter.

A great deal of anxiety has already been indicated in this Chamber by other honourable Members on both sides of the House. There was very extensive debate today on the matter. That debate may very well continue in Question Period and other places. I will be watching with very great care the questions and the responses of the Government.

Under the circumstances I am not going to order a debate today. The honourable Member may have good reason to apply at another time. I thank the honourable Member for bringing the matter to the attention of the House. As I have said, he is open to raise the matter again at another time.

On December 14, 1989:

Mr. Deputy Speaker (Mr. Marcel Danis): The matter raised by the Member for Cape Breton Highlands—Canso is no doubt a most serious and important matter. For that reason I will consider it before giving a decision, which I would intend to give at three o'clock....

The Chair received this morning an application under Standing Order 52 for an emergency debate. I have given careful consideration to the request made by the member for Cape Breton Highlands—Canso and at this time the debate will not be granted.

On December 15, 1989:

Mr. Speaker: I thank the honourable Member. As honourable Members will know, the honourable member for Cape Breton Highlands—Canso has been rising repeatedly with requests for an emergency debate on fisheries matters in the Maritimes and Newfoundland and Labrador. I am acceding to the request and I am setting the debate for eight o'clock on Monday night.

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1. *Debates*, December 13, 1989, pp. 6875-6.
 2. *Debates*, December 14, 1989, p. 6916.
 3. *Debates*, December 15, 1989, p. 7003.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: succinct statement by Member seeking leave, no debate permitted, Speaker not bound to give reasons, but does in this case; leave not granted

September 1, 1988

Debates, pp. 19167-8

Context: On September 1, 1988, the Hon. Lloyd Axworthy (Winnipeg—Fort Garry) and the Hon. Edward Broadbent (Oshawa) both gave written notices of their intention to rise pursuant to Standing Order 29 to ask for leave to move the adjournment of the House to discuss statements made by a Deputy Minister on the impact of a Canada-U.S. free trade agreement on regional development programs in Canada. Prior to hearing either application, the Speaker indicated to the two Members concerned that it would be difficult to overlook a motion which had been adopted on the previous day,¹ which impacted on the proceedings which were to be taken up and on the time of adjournment on September 1. Mr. Jim Hawkes (Parliamentary Secretary to the Government House Leader) rose to express the hope that the Government would have a right to respond to the remarks of the two Members, if it were called for. The Speaker addressed the concerns of the Parliamentary Secretary by reminding the House of the rules concerning the statement to be presented when seeking an emergency debate, and then proceeded to hear the application of both Members.² The Speaker's remarks on the general rules governing this Standing Order, and his decision on the applications are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: The rule is that an application for an emergency debate is to be a succinct statement by the honourable Member applying. It is not to be a debate on the issue, it has to be the argument for the case. The reason it must be a succinct statement is that otherwise, of course, it would be appropriate for the other side to respond. That is the rule and under the rules only the applicant can speak and the argument must be succinct. I know both honourable Members who are applying are experienced and I trust they will not take advantage of that rule. I would hope that the Parliamentary Secretary would not have to rise on a point of order because of any infringement of that rule....

I have stretched the rules considerably to hear these applications because they arise over a matter of great importance to the country. I indicated that, at least on what I knew of them earlier, I was probably not too partial to ordering an emergency debate this afternoon. I have listened carefully to both honourable Members. They are very experienced, one being a former Minister and a senior critic in his Party, and the other of course being the Leader of the NDP.

I understand fully the concern expressed by both honourable Members and others during Question Period. I also listened very carefully to Question Period and, without sitting in judgment, it seems to me, and I know I was admonished by

the reform committee not to give reasons for turning down an application, this issue is so important it may be helpful if I say why I am not inclined to grant the debate at this time.

First, as I said, I considered the matter very carefully when I received the first notice from the honourable Member for Winnipeg—Fort Garry. I considered it very carefully today. I considered very carefully the exchange in Question Period. There was a difference of opinion in Question Period on this matter. However, it is extremely difficult for the Chair to think that it amounts to an issue on which there must be an urgent debate. The Deputy Minister may or may not have said something. In any event there are differences of opinion as to what he said. Of course, there will be different conclusions drawn from what he may or may not have said. Even given the very great importance of this issue it is very difficult for the Chair to decide that this afternoon there ought to be an emergency debate.

The honourable Member for Oshawa raises another matter, and this is certainly speculation and not something upon which I can comment, that this day will perhaps be the last day of this Parliament. No one can be certain about that but it seems to me that in itself does not give cause to extend the sitting beyond the agreed order into this afternoon.

I want to say to both honourable Members as well as others that I listened very carefully because the country has been listening very carefully to the debate in this Chamber. I know there must be a very great temptation among other Members to get up and comment upon this issue. However, we have had Question Period. I of course have no more idea than anyone else what may happen in the ensuing days. There seems to be at the moment a very serious difference of opinion on what a senior official has said and the implications that flow from it but that is not sufficient at this time to order an emergency debate.

I thank both honourable Members for the succinct way they presented the matter and I also thank the Parliamentary Secretary and others for their forbearance.

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1. *Debates*, August 31, 1988, p. 19117; *Journals*, August 31, 1988, p. 3496.
 2. *Debates*, September 1, 1988, p. 19167.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: succinct statement by Member seeking leave, no debate permitted; leave not granted — other opportunities available

April 20, 1989

Debates, pp. 711-2

Context: On April 20, 1989, the Hon. Edward Broadbent (Oshawa) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss the proposed changes in regulations affecting post-secondary education programs for aboriginal Canadians.¹ The Speaker ruled against granting leave for the debate. In response to a request that the Speaker seek the unanimous consent of the House to debate the issue later in the day, the Speaker addressed some remarks on the general practices surrounding this Standing Order. In response to the indication from another Member that he would also support a call for a request for unanimous consent, the Speaker addressed some further remarks on the process which Members should follow. The Speaker's decision and supplementary remarks are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: I should say to honourable Members and to the public that I am quite sure there is great concern about this issue. As is appropriate, some time ago I received notice of the application that has just been heard. I have given it some very careful consideration. It is also important to understand that the Speaker must exercise some care in the granting of an emergency debate, that the issue is not whether the matter is important, but whether it can be pursued in this House in another way.

I say to the honourable Member for Oshawa, who has eloquently spoken on this issue, as have other Members, that the Speaker views this matter as one of very great concern and importance. It is not very often that the Speaker will indicate to honourable Members what I am about to say but, I think on this issue, I will. As the Member for Vancouver South and as someone very concerned with this matter, I have also as a Member of Parliament been involved and am involved in ongoing discussions concerning this issue. I say that to indicate that I have some very great concerns, as have other Members.

It is, however, my duty to rule procedurally on this issue. I have to say that at least under the circumstances at the moment, it is not appropriate to proceed with an emergency debate. However, for all of us who are deeply concerned about the issue and who feel great concern for some of the young people involved, the fact that I cannot rule for an emergency debate does not mean that it is not unimportant. It is a very difficult issue for all of us in this House....

The honourable Member I know rises with concern and sincerity, which concern is shared by honourable Members on all sides of the House, but we are confined in applications for emergency debates to a statement by the Member

who is applying. The reason we are so confined is that the reform committee, which did such useful work in the last few years, made it very clear that in applications for emergency debates, it is for the most part not appropriate for even the Speaker to give reasons why the Speaker approves or disapproves or allows or does not allow an emergency debate.

Furthermore, the rules are very clear that only the Member who is applying for the emergency debate is permitted to speak on it, and there are certain restraints on what the Member can say. The difficulty with this is that the honourable Member who has just risen—and I understand and sympathize with his concern and sincerity—is starting to argue a case. The difficulty is that under the rules we are moving into debate.

As was pointed out by the honourable Minister of Justice (Hon. Doug Lewis) some days ago, this creates a situation in which the other side of this question cannot be heard. In other words, I cannot recognize a Minister of the Crown to argue in reply the merits of the issue being raised. I am in a position, as honourable Members know, in which I will have to come before this House very soon with some statements in connection with what is and what is not appropriate in an application for an emergency debate.

I reiterate that I think all honourable Members in this Chamber believe that this is a very serious matter. I have indicated that I would not do this very often, but as I am involved in this as well as other honourable Members, I do not think it is appropriate for the Chair to entertain any further argument on it. There are other places, and there will be other places today, where the issue can be raised, and I am quite sure honourable Members will do so.

I hope the honourable Member will accept that I do not dismiss the matter lightly but I am bound, as you would have me bound, by the rules of this place. I want honourable Members and the public to understand that....

This is exactly why we have the rule. The honourable Member indicates he would give unanimous consent to debate this issue. That may well be, but the appropriate way is for the House Leaders of all three Parties and one of the Members of this House who is not in any of those three Parties to be approached and if there can be agreement, of course, the Chair will co-operate, but it is not appropriate to be debating that as a consequence of an application for an emergency debate. There is another way to do it and I would ask honourable Members to co-operate in that way.

I recognize full well that the honourable Member by giving his indication that he would give consent is again responding to a matter which is causing great concern to all Members of this House on both sides, as has been clearly indicated by exchanges in the House over the last number of days.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Leave not granted — other opportunities for debate; Speaker explains rule

April 27, 1990

Debates, pp. 10766-7

Context: On April 27, 1990, Ms. Dawn Black (New Westminster—Burnaby) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss violence against women and two incidents in particular which in her opinion underscored that the situation was worsening.¹ The Speaker's decision on this matter is reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: First of all, I want to thank the honourable Member for New Westminster—Burnaby for giving me notice well in advance of this application. As honourable Members will know, the honourable Member for New Westminster—Burnaby has been pursuing this matter with great diligence, not just in the last few hours, but for a long period of time.

I do want to indicate to the honourable Member that when she raised this question yesterday in the House during Question Period, and I was forced only for procedural reasons to ask her to put her question, my intervention, which I would have preferred not to have had to make, especially on this issue, was strictly procedural.

I commented yesterday to the honourable Member that I know something about the club and the place where this terrible incident happened. The honourable Member indicates that she also is familiar with the club, its members and the place. So, as your Speaker, I have a sense of personal anguish over that particular incident and, of course, others. There is no question in this House how we all feel about the terrible event in Montreal, and the many other things to which the honourable Member and other honourable Members have referred.

The honourable Member has asked for an emergency debate. I want it very clearly understood by honourable Members and also the public that it is sometimes difficult for a Speaker to adequately explain why an emergency debate might not be granted when the issue is of such terrible importance to the country, as is this. There is no question in this House among all fair-minded Members, and I think among decent people across the country, that this issue is of very great importance to us. It affects our children, our loved ones, our parents, our schools, the workplace, and it is of very great importance.

However, having said that, I know that the honourable Member would agree with me that given the diligence of which she and other honourable Members are capable, there will be other opportunities, sometimes each day and certainly in the coming days, to pursue the matter further.

With great reluctance I have to say that on strictly procedural grounds, I do not feel it appropriate to order that all of the business of the House be set aside for an emergency debate.

I want to stress to the honourable Member and also to the public who has heard her important plea that the matter is treated with a great deal of concern and must be addressed constantly.

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1. *Debates*, April 27, 1990, p. 10766.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Guidelines: no argument or discussion allowed in the presentation of the application for leave

May 9, 1989

Debates, pp. 1501-2

Context: On April 6, 1989, following an application for leave to adjourn the House pursuant to Standing Order 52 made by Mr. Bill Blaikie (Winnipeg Transcona), the Minister of Justice and Attorney General of Canada (Hon. Doug Lewis) rose on a point of order to seek the Speaker's interpretation of Standing Order 52(3) and specifically concerning guidelines existing for the statement which is made in support of applications for emergency debates.¹ The Speaker's remarks on this matter are reproduced below in their entirety.

DECISION OF THE CHAIR

Mr. Speaker: Before proceeding to Orders of the Day, I wish to give a ruling as a consequence of argument of Thursday, April 6, by way of an application for an emergency debate under Standing Order 52. At that time, the honourable Minister of Justice raised a point of order concerning guidelines that exist for the statement which can be made in support of such an application. For the benefit of honourable Members, I will read Standing Orders 52(2) and 52(3). Standing Order 52(2) reads:

A Member wishing to move, "That this House do now adjourn"—

Because that is what is moved when one wants an emergency debate.

—under the provisions of this Standing Order shall give to the Speaker, at least one hour prior to raising it in the House, a written statement of the matter proposed to be discussed.

Standing Order 52(3) reads:

When requesting leave to propose such a motion, the Member shall rise in his or her place and present without argument the statement referred to in section (2) of this Standing Order.

A strict interpretation of these two subsections could lead one to suppose that the written application was to be read to the House by the Member requesting leave for an emergency debate and that the Member would not be allowed to deviate from this prepared text. This interpretation is in general the correct one, as I said on September 30, 1987 in response to a very similar point of order raised by the then honourable Minister of Justice. That point of order and my response to it may be found on page 9498 of the *Debates*. It is also interesting to note that this interpretation is supported by the *Annotated Standing Orders* at page 175.

However, on occasion there may be mitigating circumstances which I feel, as your Speaker, I should take into account in order to respect the spirit of this Standing Order as well as its most literal interpretation.

In my ruling of September 30, 1987, I said:

The Chair has allowed and may well continue to allow sufficient comment when the application is made so that the position of the Member is clear.

Some written applications do not provide enough detail for the Speaker to know precisely what the Member wants to raise and why. Others are too long and detailed and the Member, rather than reading, should give only a concise summary.

As Speaker, I feel it is important to reiterate that *no argument or discussion* is allowed in presenting the statement.

I can certainly understand that honourable Members care deeply about these requests and may from time to time stray beyond what the rules envision. In the interests of fairness, particularly since the Government does not have an opportunity to present any counter arguments during an application for an emergency debate, I will, of course, use this opportunity to again remind Members of the rule and will be vigilant in ensuring that Members do not stray from these guidelines.

I thank the honourable Minister of Justice for raising this matter and thereby allowing me to bring this issue to the attention of Members. I hope that I can count upon the support of all honourable Members in this matter.

1. *Debates*, April 6, 1989, pp. 155-6.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Interpretation of Standing Order relating to emergency debates; effect of motion to proceed to Orders of the Day on applications for emergency debates; reiteration of need for notice of application to be submitted on each occasion leave requested

March 6, 1990

Debates, pp. 8844-6

Context: On January 23, 1990, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to discuss events of the previous day¹ which had prevented consideration of applications to adjourn the House for an emergency debate pursuant to Standing Order 52. Specifically, he noted that because a motion to proceed to Orders of the Day had been moved and adopted while the House was still considering Routine Proceedings, the opportunity to consider such applications had not occurred. In addition, Mr. Gauthier argued that there was no need to refile those notices in order to have them considered at a subsequent time. Without prejudice or precedent being created, the Speaker indicated, if the House agreed, he would deem the applications in front of him and rule on them later that afternoon.² As agreed to by the House, he subsequently ruled on the applications, and then indicated he would return to the House at a later day to rule on the strictly procedural matter raised by Mr. Gauthier.³ His decision on Mr. Gauthier's point of order is reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: On Tuesday, January 23, 1990, the honourable Member for Ottawa—Vanier rose on a point of order to express concerns about the operation of certain aspects of Standing Order 52, which is, of course, the Standing Order pertaining to emergency debates. In the ensuing procedural discussion, the Chair heard comment from the honourable Member from Kamloops (Mr. Nelson Riis), from the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) and from the honourable Member from Glengarry—Prescott—Russell (Mr. Don Boudria).

At issue was the disposition of a number of applications for emergency debates of which notice had been given for the previous day, Monday, January 22, 1990. Members had been precluded from proceeding with these applications on that Monday because the House adopted a motion to move to Orders of the Day.

In the spirit of co-operation which sometimes prevails in this place it was agreed that those applications would be deemed to be before the House the following day. They were dealt with on Tuesday, January 23, on that basis. That agreement was made subject to the express proviso that it not constitute a precedent.

The Chair undertook to reflect upon the interpretation to be accorded to this aspect of Standing Order 52 and to deal with the intricacies of the procedural matter at another time. The Chair is now prepared to share with the House the results of that consideration.

Honourable Members are all familiar with the provisions of Standing Order 52, by which a Member may seek permission to move the adjournment of the House in order to debate a “specific and important matter requiring urgent consideration”. These emergency debates as they are known are held only when a number of hurdles as spelled out in Standing Order 52 have been crossed. In particular, Standing Order 52(2) provides that any Member wishing to move the adjournment of the House under the terms of this Standing Order must give to the Speaker, at least one hour before raising it in the House, a written statement of the matter proposed to be discussed.

The items of concern addressed in the procedural exchange on this issue may be conveniently and fairly, I believe, summarized as follows.

First, concern was expressed that when a motion to move to Orders of the Day pre-empts reaching that point in Routine Proceedings at which leave to seek an emergency debate may be sought, the system is then short-circuited and the opportunity to present an application is not protected.

Second, it was contended that any notices to the Speaker requesting an emergency debate which are precluded from being presented on a given day should be held over and called on the next day when applications pursuant to Standing Order 52 would normally be reached.

In response to the first point I think it should be emphasized that the decision to move to Orders of the Day is one which is made by the House usually on the basis of a recorded division, presumably with full knowledge of the consequences, whatever they may be, of doing so. That being so I do not think it incumbent upon the Chair to second guess the decision of the House and its ramifications, and I would decline any invitation to do so.

As to whether notices of intention to request an emergency debate should be held over and called at the first opportunity, I have severe reservations in this regard.

The specific and important matters requiring urgent consideration, according to Standing Order 52(1), call by definition for immediate action or decision or attention. If that immediate attention is not accorded, it stands to reason that the nature of the matter may change. A delay of even 24 hours may serve either to diffuse or escalate the situation so that it is no longer an emergency or, conversely, it is even more critical. For this reason the Chair is reluctant to institute what would be a new practice of holding over such notices.

This reluctance is enforced by the consciousness that were notices to be held over, some honourable Members may for a variety of valid reasons not be prepared to proceed with them on a subsequent occasion.

Furthermore, the Chair is sensitive to the fact that honourable Members may wish to retain for themselves the prerogative of resubmitting notices, because in framing each successive application they have the opportunity to capture with precision the changing elements which give rise to the request for an emergency debate and which may bear heavily on the ultimate success of the application.

I would ask honourable Members to remember that on a number of occasions when applications have come to the Chair and I have decided not to proceed with an adjournment of House business for an emergency debate, I have often remarked that it would not be appropriate to do so, and I use the words "at this time". The reason for that, of course, is that circumstances can change very rapidly, especially in an area where there is concern with respect to the necessity to have an emergency debate.

The Chair is pleased to have had this opportunity to relate to the House the considerations which have informed its decision to continue the existing practice with regard to notices submitted pursuant to Standing Order 52.

I thank honourable Members for their assistance in this matter.

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1. *Debates*, January 22, 1990, pp. 7322-3.
 2. *Debates*, January 23, 1990, pp. 7363-5.
 3. *Debates*, January 23, 1990, pp. 7389-91.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Interpretation of Standing Order relating to emergency debates; Speaker's observations following discussion in the House

February 6, 1992

Debates, pp. 6463-4

Context: On February 4 and 5, 1992,¹ Mr. David Dingwall (Cape Breton—East Richmond) indicated to the Chair that he wished to rise on a point of order to put forward certain thoughts on the functioning of Standing Order 52, the standing order pertaining to emergency debates. The Chair agreed the point of order would be heard immediately following Routine Proceedings on February 6. During his remarks on February 6, Mr. Dingwall made the following points: that since the changes in the sitting hours of the House, emergency debates no longer pre-empted the business of the House; that the McGrath reform committee report had recommended holding more special debates; and that doing so would give all Members more opportunity to debate issues that mattered to them. He asked the Speaker to consider these points when ruling on applications for emergency debates. Mr. Nelson Riis (Kamloops) then rose and in his remarks contended that loosening the definition of an emergency would give Members a needed opportunity to speak on issues of relevance to them and to the public, and give the House a chance to respond to important issues of the day. The Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) argued that working through the usual channels of inter-party discussion and negotiation continued to be effective in creating such opportunities for debate, and maintained it would be unwise to deviate from the usual channels and to charge the Speaker with re-interpreting Standing Order 52. Mr. Peter Milliken (Kingston and the Islands) observed that although few opportunities existed for Members to debate public issues of urgent importance, this was essential if Parliament was to be relevant.² The Speaker took the opportunity to respond to the issues raised, and his remarks are reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: I have listened very carefully to the matter raised by the honourable Member for Cape Breton—East Richmond, commented upon by the honourable Member for Kamloops and the honourable Member for Kingston and the Islands. I have listened also very carefully to the comments of the honourable Parliamentary Secretary who has in the past years been very much involved in attention to the orders of this place and also to some steps in the reform of the orders of this place.

First of all, I want to say to honourable Members that I do not take this intervention and this discussion in any way as a criticism of past Speakers, or past rulings, or myself. I want that clearly understood.

Also, it should be clearly understood by all honourable Members and the public who is watching that sometimes we are criticized for not proceeding in a civilized way. This has been an example this morning of proceeding in a very civilized way.

I am cognizant of the mention made on both sides of the Chamber of the special arrangements that were done, as the honourable Parliamentary Secretary says, "through usual channels", in order to have additional debating time for all honourable Members with respect to the serious matters of the Constitution. I certainly must say as your Speaker that the comments made in support of that on both sides of the House are proper and should be supported.

The difficulty that the Speaker is in under this order is that until perhaps a recommendation comes out of the Members management committee and is supported by Members of the House, until there is a more or a different interpretation of the word "emergency", the Speaker is still bound by that word.

Now, having said that, there are a number of things that go into a Speaker's mind when the Speaker is trying to determine whether there is clearly an emergency or whether circumstances are changing from day to day, either building toward an emergency or sometimes diminishing the emergency. The honourable Member for Cape Breton—East Richmond commented upon that.

Comment has been made that there have been times in the past where, working through the usual channels that the honourable Parliamentary Secretary mentioned, what might not have been in the strictest and narrowest interpretation an emergency debate, was, nonetheless, acceded to by both sides of the House. This was out of a general feeling that it was in the public interest and the interest of this place that a debate take place.

I am also conscious of the fact, as the honourable Parliamentary Secretary and the honourable Member for Cape Breton—East Richmond and the honourable Member for Kingston and the Islands pointed out, that after the reform committee's recommendations were—not by the way completely accepted on this, but partially—accepted the old difficulty of a Speaker interfering with the Orders of the Day to have an emergency debate is gone. That is in the past because, as has been properly pointed out, an emergency debate would take place after Orders of the Day are concluded, except on a Friday.

Now the best approach I can take is to consider carefully what has been said. It is very difficult to ask a Speaker to unilaterally change the rules. But in determining what is an emergency, the Speaker, as has been pointed out, looks at a number of things. What may not have been an emergency at one point may become one. What might be building to an emergency might not be needed to be treated as an emergency for a number of reasons: one, because circumstances change, another might be because there is another opportunity to debate it, which is one of the things that a Speaker does have to take into account.

I want to say to all honourable Members on both sides that I take the exchange that has taken place this morning as a constructive one, and I hope that I will be able to deal with this rule as wisely as you would want a Speaker to.

Obviously, if the rule was changed, there would be other considerations. It might make it easier to rule a debate. That has to be balanced off against what the Parliamentary Secretary is properly putting up, and that is the process of usual channels, which is a very important aspect of how this place operates.

I will consider what has been said and it may very well be that we could have a further discussion on the matter.

I also want to say something else, and I know that the honourable Member for Cape Breton—East Richmond appreciates this. This is a bit unusual. It might be said that this is not a point of order in the usual manner. It may not be. It does not arise out of something that just happened on the floor of the House or out of Question Period, but it does address one of our orders, one of our rules, and the interpretation that ought or ought not to be given to it. I think that carried on briefly and with the civility which has been so manifest here this morning, it is probably a helpful thing.

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1. *Debates*, February 4, 1992, p. 6338, and February 5, 1992, pp. 6437-8.
 2. *Debates*, February 6, 1992, pp. 6458-63.

MOTIONS TO ADJOURN — EMERGENCY DEBATES

Leave granted; Speaker determines timing of debate to take into account other House decisions

June 22, 1992

Debates, pp. 12527-8

Context: On June 17, 18, 19 and 22, 1992, Mr. Brian Tobin (Humber—St. Barbe—Baie Verte) rose pursuant to Standing Order 52 to ask for leave to move the adjournment of the House to discuss the crisis in the northern cod fishery and its effect throughout Atlantic Canada. Mr. Tobin's request was strongly supported by other Members. On the first three days¹ that leave was requested, it was not granted. On June 22, however, the Speaker granted leave for the debate. However, separate and apart from the emergency debate, the House was bound by two earlier decisions which impacted on the timing for such a debate: a motion adopted June 9 to extend the hours of sitting until 10 p.m. and a motion adopted earlier that day respecting time allocation on Bill C-86, *An Act to amend the Immigration Act and other acts in consequence thereof*. The Speaker's decision with respect to the timing of the emergency debate is reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: The honourable Member for Humber—St. Barbe—Baie Verte some days ago, also the honourable Member for Nanaimo—Cowichan (Mr. David Stupich), and subsequently 40 other Members have indicated their wish that there be an emergency debate with respect to the situation resulting from the difficulties in the northern cod fishery.

I notice that the request is that these Canadians urgently require an indication of the kind of short-term and long-term strategies the Government will employ, et cetera.

I have listened very carefully over several days to the questions and the answers. There is no question that the matter is of importance and concern to all Members of the House.

After careful consideration, under the provisions of Standing Order 52, I am in a position to grant the request for an emergency debate today. However, the House is in a quandary as it adopted last June 9 an order to extend the hours of sitting until 10 p.m. In addition, earlier today the House agreed to a motion for time allocation on Bill C-86, *An Act to amend the Immigration Act and other acts in consequence thereof*, which would require, if necessary, an interruption 15 minutes before the expiry of time provided for Government Business, namely 9:45 p.m.

While Standing Order 52 governing emergency debates states that such a debate be held at 8 p.m. until midnight, I have also gone back and looked at the McGrath report. In light of the spirit of the McGrath report, which sought to allow

for emergency debates without infringing on the time of the House, I am prepared to set down for debate at 10 p.m. the matter raised by the honourable Member and Members.

This debate will conclude at no later than 12 midnight, as specified by the Standing Orders.

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1. *Debates*, June 17, 1992, pp. 12247-8; June 18, 1992, p. 12328; June 19, 1992, pp. 12453-4.

CHAPTER 9 — COMMITTEES

Introduction

During the years that Speaker Fraser held the Chair, many changes were made to the structure and powers of committees. Several of the recommendations of the Special Committee on the Reform of the House of Commons (the McGrath Committee), which had earlier been put in place on a provisional basis, were made permanent in June 1987. The introduction of legislative committees, the addition of new rules governing committee membership and the broadening of the mandate of standing committees were some of the changes that stemmed from the reforms of the mid-1980s. In April 1991 and April 1992, further alterations were made in the structure and mandates of committees.

Like his predecessors, Speaker Fraser declined to interfere in internal committee matters. At the start of his term, however, because he wanted to assist the Members to make the new committee system work satisfactorily following the implementation of the McGrath Report recommendations, he tolerated complaints originating in committee being raised as points of order or questions of privilege in the House. This period of indulgence ended on November 18, 1987, when in a key decision the Speaker set out some of the procedural rules that have traditionally governed committees. On innumerable occasions thereafter, he referred Members back to these rules.

Speaker Fraser nevertheless continued to rule on questions having to do with committee reports, protection for witnesses, leaks of confidential information, broadcasting of committee proceedings and the powers of committees. Even in these cases, however, the Speaker tended to limit his role to ruling on the procedural aspects, leaving up to the House or, more often, the committee concerned, the decision on what further action, if any, to take.

COMMITTEES

Business of committees

Research staff; alleged breach of Members' privileges; non-interference by the Speaker in committee proceedings; committees master of their own proceedings

November 18, 1987

Debates, p. 10930

Context: On October 13, 1987, Mr. John Rodriguez (Nickel Belt) rose on a question of privilege to protest the adoption by the Standing Committee on Labour, Employment and Immigration of a motion forbidding members of the Committee to make use of the services of the Committee's research staff without first obtaining the Chairman's permission. After hearing arguments from several other Members, the Speaker took the matter under advisement.¹ On November 5, 1987, the Committee Chairman, Mr. Claude Lanthier (LaSalle), rose in the House to give his version of the facts. Because Mr. Rodriguez and other Members involved in the matter had not been present in the House to hear Mr. Lanthier's remarks in full, the Speaker postponed the matter.² On November 18, 1987, he handed down a decision reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I have another ruling with respect to a matter raised on October 13 by the honourable Member for Nickel Belt, who raised a question of privilege alleging improper restrictions on the rights of the members of the Standing Committee on Labour, Employment and Immigration. Supported by several other members, the honourable Member objected specifically to the adoption by the Committee of the following motion:

That during the course of the evaluation of the Committee's researchers and research needs, no Member of the Committee engage any of the researchers without the consent of the Chairman.

Just before the motion at issue, it had been agreed to proceed to an evaluation of the committee's research needs.

On October 13, I told the House that I did not think that the honourable Member for Nickel Belt had a question of privilege. I said that perhaps he had a complaint. After studying the precedents and the authorities I can now confirm that my first view of the matter was indeed correct. There is no *prima facie* question of privilege to be found in the issue raised by the honourable Member.

Previous rulings and parliamentary custom are quite clear. Committees are definitely in control of their own procedures. In this respect, I may refer honourable Members to *Beauchesne*, Fifth Edition, Citation 569(3), which reads as follows:

The Speaker has ruled on many occasions that it is not competent for him to exercise procedural control over the committees. Committees are and must remain masters of their own procedure.

On May 3, 1972,³ Mr. Speaker Lamoureux had the following to say about a problem in a committee that was raised in the House:

I think it is long-established practice that difficulties in discussions and debates in a committee should be settled by the committee itself, and that if there are difficulties which are to be considered by the House this should be done at the time the report of the committee is before the House for debate and consideration by the Members of the House.

In addition to these points there is in my mind a question of the propriety and practicality of having the proceedings of one committee investigated by another committee of the House. I can foresee all sorts of difficulties if this were allowed and became a practice of the House.

That is a quote from the judgment of Mr. Speaker Lamoureux on May 3, 1972. [On December 4, 1973, Speaker Lamoureux added the following:⁴]

According to established custom, the proceedings of committees may not be considered or debated in the House except in the form of a committee report. If a point of order or question of privilege is raised in a committee, the matter should be dealt with in committee rather than being raised in the House....

Traditionally, the conduct of a Member may not be submitted for scrutiny to the House by way of a question of privilege.

The Speaker went on in the same ruling to say that he had:

—always had serious doubts of the advisability of having proceedings of a committee investigated by another committee of the House.

I would also cite Mr. Speaker Jerome on May 26, 1975,⁵ when he stated:

First, both Members at one time or another suggested that the Standing Committee on Privileges and Elections ought to have these questions referred to it, which to me would seem to establish a precedent and initiate or encourage a practice [whereby] the Standing Committee on Privileges and Elections would become some kind of court of appeal on the proceedings of other standing committees. It seems to me that nothing could be more unacceptable as a practice which ought to be more directly discouraged.

I can refer honourable Members to many rulings that are similar and make the same point.

I thus feel that our precedents are clear and repeat, with regret, that I cannot find that the honourable Member for Nickel Belt has made out a *prima facie* question of privilege.

I should also add that, perhaps appropriately, the Chair has been lenient in hearing complaints that may have come forward as a question of privilege or point of order from committees. I have done so because the committees have new powers and are finding their way. Perhaps by hearing some of those matters, it has assisted all honourable Members to make the committee system work more satisfactorily.

I would ask honourable Members to keep in mind that the leniency of the Chair for a while ought not to be pressed too far, and especially because of that I have taken a few minutes to put some of the procedural law, which is our tradition, before the House. I would ask honourable Members to strive mightily to resolve their problems in committee before they feel it necessary to come to the Chair on those matters.

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1. *Debates*, October 13, 1987, pp. 9920-2.
 2. *Debates*, November 5, 1987, pp. 10762-5.
 3. *Debates*, May 3, 1972, p. 1849.
 4. *Debates*, December 4, 1973, p. 8384. Please note that this extract is a translation and does not reflect the exact wording of the ruling as delivered.
 5. *Debates*, May 26, 1975, p. 6098.

COMMITTEES

Business of committees

Committees meeting during the ringing of division bells; powers of standing and legislative committees; Standing Order 108(1); Standing Order 113(5); interruption of committee proceedings: voluntary decision; practice in the British House of Commons

March 20, 1990

Debates, pp. 9512-3

Context: On January 25, 1990, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a point of order to object to the fact that committees were continuing to sit when Members were being summoned to the House for a recorded division.¹ On January 30, Mr. David Barrett (Esquimalt—Juan de Fuca) also expressed concern about this matter.²

On March 20, 1990, the Speaker delivered a ruling covering a number of issues related to the ringing of division bells. An excerpt of the ruling concerning the continuation of committee meetings during the ringing of division bells is reproduced below.

DECISION OF THE CHAIR

Mr. Speaker: Committees sitting at the same time as bells are sounded to call Members into the House for a recorded division continues to be a problem in the eyes of some honourable Members. On January 25 and again on January 30 first the honourable Member for Ottawa—Vanier and later the honourable Member for Esquimalt—Juan de Fuca raised this matter.

This is not the first time this matter has been brought forward. Last May 31, [1989] for example, the honourable Member for Hamilton East (Ms. Sheila Copps) complained that the Standing Committee on the Environment was sitting at the same time as division bells were ringing in the House to call the Members in for a vote.³

The Chair appreciates the difficult position that Members are put in because they cannot be in two places at the same time. Committees sitting concurrently as the House calls in Members for a vote can mean that an honourable Member has to decide to attend either the House to cast his or her vote or to attend the committee meeting. This is very often a serious dilemma for Members.

Let me first point out that subsection (1) of Standing Order 108 grants powers to standing committees which specifically includes the power to sit while the House is sitting and during periods when the House stands adjourned. Subsection (5) of Standing Order 113 grants exactly the same powers to legislative committees. There is no qualification whatsoever in the wording of these

Standing Orders. Thus, it would appear that there is no restriction in our rules which would prevent any committees of this House from sitting at the same time as division bells are ringing to call the Members in for a recorded vote.

This view is in keeping with rulings arising from similar situations that have occurred in the past. I can refer the House to rulings of the Chair on February 16, 1971, February 22, 1971, May 28, 1971, May 5, 1976, June 23, 1976, November 7, 1978 and June 8, 1981.⁴ These are rulings of Speakers Lamoureux, Jerome and Sauvé, and all are agreed that the Speaker can do nothing in the circumstances complained of in the face of the Standing Orders. In the ruling of February 22, 1971, Mr. Speaker Lamoureux spoke of records showing that such situations had occurred in every regular session since 1952.

Mr. Speaker Lamoureux pointed out in the same ruling that the Standing Committees of the House of Commons at Westminster interrupt their proceedings in order to allow Members to participate in divisions. It is only fair to add, however, that this is the usual practice in our committees. It is a voluntary action to suspend proceedings and respond to the bells.

I am concerned about the matter raised by honourable Members but, in my view, it is neither a point of order nor a question of privilege. It is rather a grievance but a serious one and in light of the many instances where the matter has been raised on the floor, it is one that merits some attention by the House. Perhaps the Standing Committee on Elections and Privileges might consider the situation and decide whether or not to recommend changes to our rules....

1. *Debates*, January 25, 1990, p. 7444.

2. *Debates*, January 30, 1990, p. 7616.

3. *Debates*, May 31, 1989, pp. 2390-2.

4. For the text of these rulings, please see the following pages of the *Debates*: February 16, 1971, pp. 3429-32; February 22, 1971, pp. 3601-2; May 28, 1971, pp. 6165, 6171-2; May 5, 1976, pp. 13200-4; June 23, 1976, p. 14824; November 7, 1978, pp. 876-7; and June 8, 1981, p. 10350.

COMMITTEES

Business of committees

Lack of quorum; absence of Government Members; non-interference by the Speaker in committee proceedings; notice of meeting to elect a Chairman; Members' rights

November 28, 1990

Debates, pp. 15854-5

Context: On October 11, 1990, a notice was distributed to inform Members of the Standing Committee on Transport that a meeting would be held on October 18, 1990. On October 15, 1990, Mr. Pat Nowlan (Annapolis Valley—Hants) resigned both as Chairman and as a member of the Standing Committee on Transport.

On October 18, 1990, Mr. Iain Angus (Thunder Bay—Atikokan) rose on a question of privilege to deplore the failure of the Standing Committee on Transport to hold the meeting planned for that day because a quorum could not be met. He suggested that Government Members had perhaps purposely boycotted the meeting to bring pressure for adoption of the recommendations in the 49th Striking Committee Report on new membership lists for standing committees, and argued that such action amounted to an infringement of his rights and that of other Committee members. The Speaker took the matter under advisement, but urged the Members to resolve it amongst themselves.¹

On October 30, 1990, Mr. Angus raised another question of privilege, this one regarding the failure of the Chief Government Whip (Mr. Jim Hawkes) to call a meeting of the Committee for the purpose of electing a new Chair. Following remarks by several other Members, the Speaker pointed out that he had already taken the matter under advisement, but added that he would take the day's representations into consideration when making his decision.² On November 28, 1990, the Speaker handed down a ruling which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I am now ready to rule on the question of privilege raised on Thursday, October 18 by the honourable Member for Thunder Bay—Atikokan regarding events which transpired in connection with a planned meeting of the Standing Committee on Transport of the same day. The honourable Member explained that a meeting of the transport committee had been duly convened with seven days notice pursuant to Standing Order 106(3) for the morning of October 18. He went on to state that the meeting did not take place because quorum could not be met. To put it in ordinary terms, there were not enough members there to proceed with the meeting.

The honourable Member further argued that the absence of Government Members was perhaps a collective decision which in essence created a boycott of the Committee and as such was an infringement upon the rights of other members

of the Committee. The honourable Chief Government Whip stated on the other hand that various Government Members of the committee had important previous commitments and it was felt that the subject matter was too important to leave in the hands of alternate or substitute members.

I have carefully considered the comments made by the Member for Thunder Bay—Atikokan and the Chief Government Whip, and also the excellent arguments for and against which were made on that day by other Members. It is difficult for the Speaker to decide on the specific issues raised by the Member for Thunder Bay—Atikokan.

According to the conventions and traditions of this place, the Chair ought not to intervene in the proceedings of a committee unless the matter has been placed before the House by means of a report from the committee. While there obviously could be no report in these circumstances since the meeting never took place, the attendance or non-attendance of honourable Members at committee meetings is clearly in the Chair's view not a matter upon which the Chair can or should take a position. However, it is a matter obviously of concern to the House and it becomes a matter of concern for the Speaker because when there are problems within the committee system, eventually and inevitably they are raised in this Chamber and before the Speaker.

As I have said on other occasions, it has to be a very severe situation indeed for the Speaker to consider intervening.

Further details of this situation have, however, been brought to the attention of the Chair by the honourable Member for Thunder Bay—Atikokan in a subsequent intervention on Tuesday, October 30, 1990. At that point, the honourable Member asked the Chair to rule on whether the fact that the Chief Government Whip had not convened a meeting of the Standing Committee on Transport for the purposes of electing a chairman constitutes an act which impedes Members of the House in the performance of their duties on committees, in connection, specifically, with the review of Order in Council appointments [as] provided for in Standing Orders 110 and [111].

In his comments, the Chief Government Whip said that [the] House need only vote on the Striking Committee report pertaining to the membership of standing committees in order to deal with the situation of the Transport Committee.

The Chair has looked very closely at this matter. Clearly there is no chairman of the Standing Committee on Transport to convene a meeting for any purpose. Under these circumstances and pursuant to past practice, the next meeting of the committee can be convened by the Clerk of the House if the report of the Striking Committee providing for new committee memberships is adopted, or by the Chief Government Whip in consultation with the Whips of the other parties.

The Chair can see that there is cause for concern here, that it is difficult to find a breach of the privileges of honourable Members in the fact that a standing committee is paralysed and cannot meet. The solution would appear to lie in negotiations among the parties, which the Chair would encourage at this time.

I have to say to honourable Members and to the public that the working of committees is very important to the working of the House of Commons. I do ask honourable colleagues to make every effort possible to come to whatever agreements and understandings among themselves which are necessary to make these committees work.

I do not want to state this too often, and I hope that I will not have to, but there is a general feeling across this country that somehow or other not only politicians, but maybe institutions, are letting down the country. This is why it is essential that everybody make an extra effort to try to make this system work.

I am not happy with this situation, obviously. But, I am also bound by rules here and if I am to intervene in committees, it has to be in a very severe and outrageous situation indeed. While this is not only inconvenient but perhaps aggravating, I do not feel that I can depart from the laws which bind me as they bind all other Members of the House of Commons.

I thank honourable Members for their intervention.

....

The honourable Member for Hamilton West (Mr. Stan Keyes) rises on a point of clarification. I have made it clear in the past that I do not take the position, nor do I think a Speaker should take the position, that a Speaker is forever bound never to intervene in a committee matter. But, it will have to be a matter of very gross disorder indeed, a very grave situation.

This is a matter which can still be settled by consultation. The jurisprudence on this kind of question goes back not just decades, but for a long, long time indeed, and not just to jurisprudence in this House but in other Houses where we have the parliamentary system. I am very reluctant to move into the committees if it can be possibly avoided.

What I want the honourable Member and other honourable Members to understand very clearly, I am not saying that there might not be an occasion in which the Speaker would have to move. One can say well, it has not been done before. Speakers have made decisions in the past that had not been done before, and they form part of the precedents of our law of procedure.

What I am asking honourable Members in this case to do is please take into account everybody's responsibility to this institution and to our country, and try to resolve it. I think it can be resolved by discussion, and that is the way I would hope it would be resolved.

What I am saying to the honourable Member, in summary, is I might have to intervene at some point.

It would have to be under a most grave situation, and I am reluctant to move into the committee field and do what really the members of the committee ought to do for themselves.

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1. *Debates*, October 18, 1990, pp. 14316-20.
 2. *Debates*, October 30, 1990, pp. 14855-9.

COMMITTEES

In camera meetings

Disclosure of confidential information; confidential nature of draft reports; leak; recorded division—disclosure of results; respect for confidentiality; disclosure of information to the press—Members' role and responsibilities; reprimand; practice in the British House of Commons; practice in the Canadian House of Commons; *prima facie* question of privilege

May 14, 1987

Debates, pp. 6108-11

Context: On March 25, 1987, Mr. John Parry (Kenora—Rainy River) rose during "Statements by Members" to object to the rejection, during an *in camera* meeting of the Standing Committee on Aboriginal Affairs and Northern Development, of a draft report.¹ He then named the Members who had voted to reject the report. On April 28, 1987, the Standing Committee on Aboriginal Affairs and Northern Development presented a Report to the House regarding the incident.² Later that day, Mr. Felix Holtmann (Selkirk—Interlake) rose on a question of privilege regarding the same matter. As Mr. Parry was absent from the House, Mr. Holtmann agreed to postpone making his substantive arguments until another sitting.³ On May 5, 1987, Mr. Holtmann argued that the unauthorized disclosure of the proceedings of an *in camera* committee meeting could be damaging to Members and constituted a breach of privilege.⁴

On May 13, 1987, the Standing Committee on Energy, Mines and Resources presented its Sixth Report to the House.⁵ This Report dealt with the issue of the alleged disclosure to the media of *in camera* proceedings of the Committee. Later that day, Mrs. Barbara Sparrow (Calgary South), the Chair of the Standing Committee on Energy, Mines and Resources, rose on a question of privilege to allege that the leak of information had impeded her in the performance of her duties, both as a Member and as the Committee Chair, and had jeopardized the proceedings of the Committee, and by extension, of all other committees of the House. Other Members also participated in the discussion. The Speaker thanked Members for their interventions and indicated that he would be returning to the House with a ruling the next day.⁶

On May 14, 1987, the Speaker handed down a ruling which dealt with both questions of privilege. The ruling is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: I am now ready to rule on the question of privilege raised by the honourable Member for Selkirk—Interlake on April 28 and May 5, as well as the question of privilege raised by the honourable Member for Calgary South yesterday, May 13.

I will first briefly recapitulate the sequence of events underlying the first question of privilege, as I understand them.

For the benefit of those honourable Members who were unable to be here yesterday, as well as the public, let me say that this ruling relates to alleged leaks of information from committee meetings held *in camera*; that is to say, in absolute privacy.

There have been several incidents over the last few months involving such leaks brought to the attention of the Chair. The Chair considers such leaks a very serious matter.

As was pointed out by the honourable Parliamentary Secretary to the Deputy Prime Minister and the President of the Privy Council (Hon. Doug Lewis) a few days ago, when this place operates at its best, it operates on the basis of mutual trust. When honourable Members take part in what is an *in camera* meeting—and it is not for the Chair to say when and under what circumstances such meetings are held; that is a decision for the respective committees—they have to be assured that what takes place in confidence will be held in confidence.

That, I am sure, is a sentiment shared by all honourable Members, and it is that which the Chair intends to address in its ruling. I invite all honourable Members, some of whom were unable to be here when the arguments were given, to reflect upon that, and I also want the public watching the proceedings of this place to understand exactly what it is the ruling relates to.

To briefly recapitulate the sequence of events, on March 24 last the Standing Committee on Aboriginal Affairs and Northern Development met *in camera* to consider a draft report to the House. The committee resolved—and remember, the committee was *in camera*—following a recorded vote, not to report the draft report to the House at that time.

On the following day, the honourable Member for Kenora—Rainy River, a distinguished member of that particular committee, and an individual for whom honourable Members have high regard, made a statement under Standing Order 21 criticizing the decision of the Committee. In the course of his statement, he said:

In an anonymous office tower, behind closed doors and safely tucked away from probing microphones, four Members of Parliament abrogated their responsibilities to Aboriginal people.

He then went on to disclose the names of four members of the Committee who, in his words, “voted to block the report”.

On April 1, at another *in camera* meeting, the Committee considered a motion to report the action of the honourable Member for Kenora—Rainy River to the House. The report was adopted on April 7 and later presented to the House. On the presentation of the report the House was formally seized of the matter.

The matter raised by the honourable Member for Calgary South yesterday concerned the publication in the press of certain proceedings which took place at an *in camera* meeting of the Standing Committee on Energy, Mines and Resources. In this case, as well, the matter was formally reported to the House by the Committee. The honourable Member provided the Chair with the relevant press reports, which constitute the only available evidence. The Committee did not attempt to identify the source of the leak.

On April 28, the honourable Member for Selkirk—Interlake raised the matter arising from the Standing Committee on Aboriginal Affairs and Northern Development as a question of privilege. Because of the absence of the honourable Member for Kenora—Rainy River, who was engaged in other parliamentary business, argument was postponed until May 5.

The presentation of the honourable Member for Selkirk—Interlake was very straightforward. He argued that the unauthorized disclosure of the proceedings of an *in camera* meeting of a committee could be damaging to Members and constitute a breach of privilege. He supported his argument with an apposite citation from the Nineteenth Edition of *Erskine May's Parliamentary Practice*.

The honourable Member for Kenora—Rainy River, in a defence of his action, claimed that he did not violate the intent of the *in camera* meeting and that a clear distinction should be made between “votes” and “proceedings”. He argued that with the taking of a recorded vote, the *in camera* meeting was in essence suspended.

I noted at the time that the honourable Member for Kenora—Rainy River, who I have commented is a well-respected Member of the House, did not take the position that a Member was entitled to reveal anything which goes on at an *in camera* meeting just because he or she did not happen to agree with it.

It is important for the Chair to make it very clear that that was not the thrust of the defence of the honourable Member for Kenora—Rainy River. He was not saying that a particular Member ought to be able to reveal anything that happens *in camera* if he or she feels strongly about it; that was not the honourable Member's position.

As I say, the position was that there was a difference, as he argued, between the substance of the discussion which had been taking place in the *in camera* meeting and the vote which took place in the *in camera* meeting. However, there is no doubt on the facts, the vote took place within the *in camera* meeting.

He argued that with the taking of a recorded vote, the *in camera* meeting was in essence suspended. As I say, I noted at the time that he did not take the position that a Member was entitled to reveal anything which goes on at an *in camera* meeting just because he or she did not happen to agree with it.

The honourable Member was supported in his argument by the honourable Member for Cochrane—Superior (Mr. Keith Penner) who is a senior Member of this place and enjoys the respect of all honourable Members. The honourable Member for Cochrane—Superior requested the Chair to rule “that the revelation of a recorded vote under any circumstances at all is not the same thing as the publication of a committee’s proceedings.” He also expressed doubt that such a revelation could damage the reputation of the honourable Member for Selkirk—Interlake in any event.

We had two Members arguing that there was a distinction between the substance of what took place—the discussions and the vote. Again I reiterate that neither honourable Member was in any way, as far as the Chair is concerned, taking the position that *in camera* proceedings ought not to be respected just because a Member does not agree with what goes on there or, as I suppose could be implied in this case because both honourable Members are very concerned about native matters, depending upon the seriousness of the discussion and the nature of the issues involved.

The Chair first had to decide, therefore, whether a recorded vote taken at an *in camera* meeting of a committee was not, as the honourable Member for Kenora—Rainy River and the honourable Member for Cochrane—Superior claimed, a part of the *in camera* proceedings.

I must say that the two honourable Members argued their points very effectively. However, the Chair has been forced to the conclusion that when a committee resolves to meet *in camera*, the intention of the committee is that all deliberations which take place at that meeting must be confidential unless and until it resolves otherwise. It is clear that the Standing Committee on Aboriginal Affairs and Northern Development did not resolve that its sitting should be resumed in public for the purpose of taking the recorded vote. The committee did in fact resume its sitting in public subsequently, but not before the vote was taken. I cannot therefore accept the argument that there is a distinction between votes and proceedings in this context and in the manner argued by both honourable Members.

The next question to be decided by the Chair is whether this particular disclosure of what took place at an *in camera* meeting constitutes *prima facie* evidence of a question of privilege.

The honourable Member for Selkirk—Interlake quoted a sentence from the Nineteenth Edition of *Erskine May*, which is repeated in identical terms on page 154 of the Twentieth Edition. The citation reads:

The publication or disclosure of proceedings of committees conducted with closed doors or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt.

In the British House of Commons, this principle has always been strictly enforced. As recently as 1968 a British Member was ordered by the House to be reprimanded in his place by the Speaker for having revealed to a journalist confidential evidence received by a committee of which he was a member. In 1976, *The Economist* was censured by the Committee of Privileges for having published the confidential report of a select committee.

Canadian practice in this area is less easily defined, although Citation 628(1) of *Beauchesne* Fifth Edition indicates that the publication of the proceedings at an *in camera* meeting of a committee would be an offence with which the House could deal upon receiving a report from the committee.

There are two rulings of October [22], 1975⁷ and [June 23], 1977⁸, dismissing complaints arising from the disclosure of confidential proceedings of committees. These are two Canadian rulings of this House. I should point out that the circumstances of these two cases were not unlike those of the case raised by the honourable Member for Calgary South, but rather different from those of the one raised by the honourable Member for Selkirk—Interlake. In the 1975 case the complaint was dismissed because it was not directed against any specific individual or group.

In the 1977 case the complaint was directed against the press, and Mr. Speaker Jerome said the following in the course of his ruling:

It concerns me, however, that the motion appears to attack the press for publishing a confidential document but does not attack ourselves as Members of the House for our own attitude in respect of our own confidential documents. Since it misses that point it misses something I think most important with respect to the privileges of the House.

The honourable Member for Windsor West (Hon. Herb Gray) referred to this ruling when he was speaking to the question of privilege raised by the honourable Member for Calgary South. I must agree that it does not become the House to attack the press without reviewing the part that some of us as Members of the House have played in revealing the confidential proceedings of certain

committees. One can hardly blame the press for publishing leaked information. It is far more important that we, as Members of Parliament, should address our own responsibilities in ensuring that such leaks do not take place.

I believe it is my duty on your behalf to state in categorical terms that when a committee resolves to meet *in camera*, all the deliberations which take place at such a meeting, including any votes which might be recorded, are intended to be confidential. All Members attending such a meeting, together with any members of the staff assisting the committee, are expected to respect the confidentiality of proceedings which take place at that meeting. This place can only operate on the basis of respect for its rules and practice and of confidence and trust among its Members.

At this point I am prepared to rule that I do not feel I can accord precedence over other business to the question of privilege raised by the honourable Member for Calgary South. My reasoning, as I think honourable Members will have divined, is the same as that which inspired Mr. Speaker Jerome's ruling of May 6, 1977. We should not attack the press before determining the measure of responsibility that attaches to ourselves as the possible source of the leaked information.

The question of privilege raised by the honourable Member for Selkirk—Interlake involves other considerations. The elements which influenced the Chair in dismissing the two complaints raised on October 21, 1975 and May 6, 1977 are not present in this case. The complaint of the honourable Member for Selkirk—Interlake is directed at a Member of this House on the basis of undisputed facts.

The Standing Committee on Aboriginal Affairs and Northern Development was meeting *in camera* and a recorded vote was taken before the committee resumed its sitting in public. The honourable Member for Kenora—Rainy River made a statement in this House under Standing Order 21 criticizing the decision of the committee and revealing the names of four members who participated in the vote. These facts were duly reported to the House by the Committee. In these circumstances, it would be very difficult to dismiss the complaint of the honourable Member for Selkirk—Interlake. I find, therefore, in view of the evidence which has been presented to the Chair that this matter should be accorded the necessary precedence.

I should explain, in case the practice is not generally understood, that the Chair is not judging this issue. Only the House itself can do that. The Chair simply decides on the basis of the evidence presented whether the matter is one which should take priority over other business. For those who may get lost in these procedural terms, it just means that this matter is now deemed by the Chair to be sufficiently serious to be put to the House in precedence over anything else the House might be doing at this time. That is all it means. The point is that it is the House that is to make the decision.

The next step is normally the introduction of a motion by the Member raising the complaint. Such motions usually propose the referral of the issue concerned to the Standing Committee on Elections, Privileges and Procedure; not back to the committee from which the complaint came, but to the Standing Committee on Elections, Privileges and Procedure. The House might then decide to take no further action until the Committee has reported. However, I point out that the motion is debatable and the effect of my ruling is to allow it to be taken into consideration immediately, with or without debate. I might also point out that the usual practice has been for the House to allow the matter to go to the appropriate committee without debate but, as I say, I am saying that if any honourable Member feels compelled to enter into debate, then that is the right of any honourable Member.

Again, so far as the Chair is concerned, the vigorous arguments put forward by the honourable Member for Cochrane—Superior and the honourable Member for Kenora—Rainy River strove to draw a distinction between the vote which took place *in camera* and the substance of the discussion. I want to emphasize once more that if the honourable Member for Selkirk—Interlake proposes the motion and it goes to committee, that is the question which the committee is to decide. It has been the sense of the Chair that you cannot divide these two, but it is also important for all honourable Members to remember that in the vigorous arguments put forward by both Members in defence of the application neither of them at any time was advancing the notion that *in camera* meetings are not to be respected. I ask honourable Members to keep that in mind.

It is important that this matter be considered in the context of the position taken by both honourable Members, but it is also very important, in the view of the Chair, that this serious principle be addressed because it goes beyond the question of any one particular individual Member; it is a matter of grave importance for all of the committees that are operating in this place.

I therefore invite the honourable Member for Selkirk—Interlake to move an appropriate motion.

Postscript: The following motion was moved immediately:

That the matter of disclosure by the honourable Member for Kenora—Rainy River of a recorded vote taken at an in camera meeting of the Standing Committee on Aboriginal Affairs and Northern Development, as reported to the House by the said committee on April 28, 1987, be referred to the Standing Committee on Elections, Privileges and Procedure.

After comments by Mr. Penner and Mr. Lorne Nystrom (Yorkton—Melville), the Speaker put the question and the motion was adopted.

The Standing Committee on Elections, Privileges and Procedure tabled its Seventh Report on December 18, 1987.⁹ The Committee agreed with Mr. Parry's own

view that his actions were intemperate and, further, that they wilfully went against the legitimate order of the Committee to keep its deliberations confidential.

Following the presentation of the Report, Mr. Parry rose on a question of privilege and apologized to the House for his actions. The Speaker commended the Member for his attitude and his acceptance of what had been for him, a difficult matter.¹⁰

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1. *Debates*, March 25, 1987, p. 4540.
 2. *Journals*, April 28 and 29, 1987, p. 791.
 3. *Debates*, April 28, 1987, pp. 5329-30.
 4. *Debates*, May 5, 1987, pp. 5737-42.
 5. *Journals*, May 13, 1987, p. 909.
 6. *Debates*, May 13, 1987, pp. 6057-9.
 7. *Debates*, October 22, 1975, pp. 8451-3. The matter was originally raised on October 21, 1975, *Debates*, pp. 8395-7.
 8. *Journals*, June 23, 1977, pp. 1203-10. The matter was originally raised on May 6, 1977, *Debates*, pp. 5361-5. Please note that the ruling on June 23, 1977 addressed three separate questions of privilege. The portion of the ruling quoted pertains to a question of privilege raised by Mrs. Simma Holt (Vancouver—Kingsway) on May 6, 1977 and is found on pages 1209-10 of the *Journals*.
 9. See *Journals*, December 18, 1987, pp. 2014-6 for the text of this Report in its entirety.
 10. *Debates*, December 18, 1987, pp. 11950-1.

COMMITTEES

Committee reports

Government response; comprehensive response; interim response; special committee; standing committee; Speaker's authority

September 24, 1987

Debates, pp. 9266-8

Context: *On March 30, 1987, the Special Committee on Child Care tabled its Final Report and, pursuant to Standing Order 99(2), requested that the Government table a comprehensive response within 150 days.¹ On July 28, 1987, the Hon. Jake Epp (Minister of National Health and Welfare) filed with the Clerk of the House a document entitled "Interim Response of the Government of Canada to the Final Report of the Special Committee on Child Care".² On August 12, 1987, Ms. Sheila Copps (Hamilton East) rose on a point of order to argue that the Government's response was incomplete. The Minister replied that the Government would table a further report and a further response on child care in the coming months, and added that the reasons for this delay were clearly stated in the Government's Interim Response. After hearing from several other Members, the Speaker reserved his ruling.³*

On August 28, 1987, Mrs. Sheila Finestone (Mount Royal) rose on a point of order regarding the apparent failure of the Government to provide a comprehensive response to the Fifth and Sixth Reports of the Standing Committee on Communications and Culture. The Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)) said he would be prepared to deal with the procedural aspect of the Member's point of order, but asked Mrs. Finestone to delay the presentation of her argument until the Minister of Communications (Hon. Flora MacDonald) could be present to deal with the substantive aspects of the matter. Mrs. Finestone agreed.⁴ On September 9, 1987, Mrs. Finestone again raised a point of order on the matter. The Member argued that by dealing in "vague terms" with only some of the recommendations in the Fifth Report, and by failing to respond to any of the recommendations in the Sixth Report, the Government had breached Standing Order 99(2). She therefore requested that the Speaker rule whether the response tabled by the Government in fact constituted a comprehensive response to the Committee's reports. Several other Members, including the Chairman of the Standing Committee on Communications and Culture (Mr. Jim Edwards) and the Minister of Communications, participated in the discussion. Having listened to the arguments, the Speaker took the question under advisement.⁵

On September 24, 1987, the Speaker made one ruling covering the points of order of both Ms. Copps and Mrs. Finestone. The text of the ruling is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: I want to draw to the attention of honourable Members that the Chair is now ready to rule on a point of order raised on August 12, 1987, by the honourable Member for Hamilton East about the Government's response to the report of the Special Committee on Child Care and the point of order raised by the honourable Member for Mount Royal on September 9 last relating to the Government's response to the Fifth and Sixth Reports of the Standing Committee on Communications and Culture. Because both points of order deal with the interpretation of Standing Order 99(2) the Chair wishes to comment on both points in the same ruling, but because of certain differences of form and content, I will deal with them in the order in which they were raised.

On August 12, the honourable Member for Hamilton East took the position that the document tabled by the Minister of National Health and Welfare in response to the Special Committee on Child Care and entered in the *Votes and Proceedings* of Tuesday, August 11, 1987, did not meet the requirements of Standing Order 99(2) which reads as follows:

Within 150 days of the presentation of a report from a standing or special committee, the government shall, upon the request of the committee, table a comprehensive response thereto.

The honourable Member for Hamilton East claimed that the response of the Minister was interim in nature and did not fulfil the essential condition of the standing order that it be comprehensive. A number of other honourable Members expressed the same concern.

The question before the Chair is whether the Minister's response adequately meets the requirements of the Standing Order, namely whether or not it is a comprehensive response. This is not the first time the Chair has been asked to rule on the quality of a Government response. In earlier rulings on similar points of order the Chair expressed the view that the very fact of establishing what constitutes a comprehensive response would be tantamount to ruling on the acceptability of the response, something which the Chair simply cannot do.

There are, however, certain details of this matter which differentiate it from previous cases. The Chair has read the letter from the Minister of National Health and Welfare. It plainly states at the beginning that it is an "interim response" and goes on in the second to last paragraph to affirm that a "comprehensive announcement" on the National Strategy on Child Care will be made in the fall. In essence, this is an open admission that the response in question is not as comprehensive as required by the terms of Standing Order 99(2).

The Chair finds itself in some difficulty on this matter since there has obviously been a specific and clear breach of rules by the Minister. Nonetheless, there are reasons in this particular case why the Chair feels inclined to give the benefit of the doubt to the Minister.

As the Minister pointed out to the House, divided constitutional jurisdiction and unresolved intergovernmental discussions and negotiations are involved in this issue. This would suggest that the Minister is not entirely at fault in these particular circumstances and that efforts are being made to address the Committee's recommendations. Furthermore, the Minister did report back to the House within the specified period, albeit in a form not provided for in this standing order.

Having said that I would like, however, to remind all honourable Members that government responses to committee reports are an important element of the reform process and one which the Chair feels should be respected.

The honourable Member for Winnipeg—Birds Hill (Mr. Bill Blaikie), a distinguished member of the Special Committee on Reform of the House of Commons, in his intervention on this matter, made the point that having the Government make its position clear at a predetermined time with respect to the recommendations of particular committees is an essential ingredient of the reform process. He went on to argue that if technical responses became the habit in this place then the spirit of reform will have been lost. The Chair feels that there is considerable merit to this observation and reminds all honourable Members of the need to make every effort to interpret our rules in as reasonable and as straightforward a way as possible.

The Chair wants to make another comment which was not made in the course of the debate. The Committee on Child Care was a special committee and, unlike a standing committee, it was dissolved after tabling its final report to the House, pursuant to the current practice. Committee Members, therefore, had no recourse other than raising the issue in the House. Although the rule does not provide for sanctions against Ministers who would choose to disregard these provisions, the Chair considers that breaching this rule with respect to a special committee report is more serious, for it might enable the Government to delay indefinitely its response to special committee reports.

The point of order raised by the honourable Member for Mount Royal on the surface seems to be a similar case. But a close scrutiny of the issues demonstrated fundamental differences. First, the matter pertains to a standing committee of the House and not a special committee. Second, the Minister of Communications in tabling a response to the Fifth and Sixth Reports of the Communications Committee was not offering to give an interim response but attempting to comply with the provisions of Standing Order 99(2). Third, the complaints of the honourable Member for Mount Royal, the honourable Member for Edmonton South and the honourable Member for Broadview—Greenwood (Ms. Lynn McDonald) revolve around the issue of the "lack of comprehensiveness" of the Minister's response.

The honourable Member for Edmonton South, who is the Chairman of the Standing Committee on Communications and Culture, eloquently summarized the frustration of the committee members and urged the Chair to reconsider an earlier ruling of June 29, 1987, when the Chair ruled that:

—The nature of the response must be left to the discretion of the Government [and,] if honourable Members are dissatisfied, there are other avenues available through which they can pursue the matter.⁶

The honourable Member for Edmonton South would know that the Chair is always reluctant to reconsider earlier rulings. Still I can elaborate on what I said in June by attempting to be more specific and providing an explanation which might be more useful in this case.

What I said on June 29, 1987, and what Mr. Speaker Bosley said on April [21], 1986,⁷ still applies to this case. It is not for the Chair to pronounce on the quality of the government response. The word “comprehensive” in the standing order is not without meaning, however. A simple yes or a curt no to all of a committee’s recommendations could be a comprehensive response indeed. Neither response might be satisfactory, depending on one’s point of view.

Under the new rules, and particularly Standing Order 96(2), standing committees now have extensive new powers and the Committee on Communications and Culture can pursue the matter of the quality of the Minister’s response with her. I understand that process has already begun.

The statute law, the programs and policy objectives, the expenditure plans, management and organization and operation of government departments are permanently and fully accessible to the Committee. That is the other avenue to which I alluded on June 29, 1987. No longer do standing committee members need to raise in the House such issues and no longer do they need a specific House order to proceed. The proper place to raise these matters is in the committee which ultimately can use its power to report to the House if it feels its privileges have been offended.

The reform of the standing committees is an important and fundamental aspect of the renewal of our parliamentary system of Government. The principle of accountability has been enhanced to a degree never achieved before. Having been given such enlarged mandates, committees should proceed judiciously and responsibly. Standing committee members should avoid raising disputes in the House unless a standing committee has reported that its business is being systematically frustrated and its privileges are consequently affected.

As to special committees, since their mandate expires with the tabling of their reports the Chair will always be prepared to entertain such grievances as that submitted by the honourable Member for Hamilton East even though the Chair has no direct authority to order the Government to provide comprehensive responses.

These are very important matters that relate to our new rules and the Chair hopes its comments can and will be helpful.

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1. *Journals*, March 30, 1987, p. 670.
 2. The tabling of this document was recorded in the *Journals*, August 11, 1987, p. 1317.
 3. *Debates*, August 12, 1987, pp. 7983-7.
 4. *Debates*, August 28, 1987, p. 8577.
 5. *Debates*, September 9, 1987, pp. 8781-8.
 6. *Debates*, June 29, 1987, pp. 7749-50.
 7. *Debates*, April 21, 1986, p. 12480.

COMMITTEES

Committee reports

Procedural acceptability; limits on debate; time allocation; regularity of proceedings; rights of the minority; rights of the majority; non-interference by the Speaker in committee proceedings; conduct of committee chair; definition of precedent

April 2, 1990

Debates, pp. 10074-6

Context: *On March 30, 1990, the Standing Committee on Finance presented to the House its Report on Bill C-62, An Act to implement the Goods and Services Tax.¹ Later that day, Mr. Nelson Riis (Kamloops) rose on a point of order to challenge the procedural acceptability of the Report, which, he claimed, was based on procedurally dubious Committee proceedings.² The Member reminded the House of the question of privilege raised on March 21, 1990, regarding the conduct of the Committee Chairman, Mr. Don Blenkarn (Mississauga South), and of the Speaker's ruling of March 26, 1990, on the question.³ He then put the following questions to the Speaker: Had a precedent been set by the Chairman of the Finance Committee in his ruling of March 20, 1990, imposing time allocation? Do committee chairmen have the right to impose closure or time allocation without debate or the committee's consent? Was the review by the Finance Committee of Bill C-62 tainted by irregularity as a result of the Chairman's March 20 ruling? Was the Report of the Committee still receivable by the House?*

A number of Members spoke. Some challenged Mr. Riis' view of procedural acceptability with respect to the Committee Report, while others questioned the procedural validity of several of the Committee Chairman's actions and discussed the conflict between the rights of the minority and those of the majority. The Acting Speaker (Hon. Steven Paproski) took the matter under advisement. On April 2, 1990, the Speaker handed down a ruling, which is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On March 30, 1990 the honourable Member for Kamloops rose on a point of order to express his concern about the procedural acceptability of the Finance Committee's Report on Bill C-62, the Goods and Services Tax Bill.

The honourable Member recalled that on March 21, the actions of the Chairman of the Standing Committee on Finance, the honourable Member for Mississauga South, were raised in the House as a possible breach of privilege. These were dealt with by the Chair in the ruling of March 26.

The honourable Member indicated that since the Committee's Report and evidence was now formally before the House this was the appropriate time to challenge the procedural acceptability of the report which he alleges is based on irregular proceedings.

In his comments the honourable Member for Kamloops addressed a number of serious issues. Many other honourable Members from both sides of the House also presented strong arguments on different aspects of the situation. As your Speaker, I am aware of the deep concern surrounding this matter and the events which transpired in the Finance Committee on the night of March 20, 1990.

One side of the House argues that while the opposition has the right to oppose, the Government has the right and indeed the responsibility to govern and to advance its legislative agenda. From that perspective the Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper) contended that the Chairman of the Finance Committee had the obligation to maintain order by ending an opposition filibuster and so permitting the Committee to consider and vote on each clause of the Bill and to report the Bill back to the House as it had been mandated to do.

The other side of the House argues that the majority has the right to govern, but that right is not absolutely unfettered. As the honourable Member for Kamloops and others have argued, through the rules it has adopted for the conduct of business, the House itself places certain limitations on the right of the majority and so ensures that the rights of the minority are protected. They contend that certain actions taken by the Chairman of the Finance Committee were in violation of these established rules and that the Report of the Committee should therefore be ruled procedurally irreceivable thus firmly establishing a precedent whereby committee chairmen cannot make arbitrary rulings.

Your Speaker is acutely aware of the sensitive nature of the questions raised by this case and of the message which this ruling will send to other committees, both in this Parliament and future Parliaments.

I ask honourable Members to bear with me as I give you the perspective of the Chair on the procedural implications of the case before us.

First, a comment which I made in my ruling on March 26, [1990] at page 9756 of *Hansard* bears repeating:

The Speaker has often informed the House that matters and procedural issues that arise in committee ought to be settled in committee unless the committee reports them first to the House. I have, however, said to the House that this practice is not an absolute one and that in very serious and special

circumstances the Speaker may have to pronounce on a committee matter without the committee having reported to the House.

For the record I wish to indicate that the Finance Committee has not reported on an alleged breach of privilege or on some other irregularity. It simply reported Bill C-62 with amendments.

The Chair must again reiterate that under normal circumstances the House is only seized with matters occurring in committees when those matters are reported to the House. I refer honourable Members to Citation 76 of *Beauchesne* Fifth Edition and to illustrate this practice to the report of the Aboriginal Affairs and Northern Development Committee tabled on April 28, 1987.⁴

However, as I explained on March 26, 1990, the Chair is prepared to deal with extraordinary situations which may occur in committees without a formal report on the occurrence.

First, let us deal with the primary practical issue the Chair is being asked to resolve, namely, whether or not the report of the Standing Committee on Finance on Bill C-62 is receivable. I have carefully reviewed the arguments presented by the honourable Member for Kamloops and the comments made by the honourable Member for Kingston and the Islands (Mr. Peter Milliken) and the honourable Member for Edmonton East (Mr. Ross Harvey). I have examined as well a ruling referred to by the honourable Member for Kamloops, a ruling which was made some 70 years ago pertaining to the authority of the Speaker to go back to the proceedings of a committee in order to judge whether a report is in order. On July 1, 1919, Speaker Rhodes states at page 4313 of *Hansard*, and I quote:

The point of order as to the proceedings in the committee should be raised in the committee. The House is only seized of the proceedings of the committee from the report that it gets from the committee. There is no reference in the report whatever to any question having been raised in committee [and] therefore my ruling is that it is not competent for this House to go back [to] the report which is in its possession. The report of the committee is regular on its face [and] I therefore rule that the point of order is not well taken and that we are governed by the report of the committee as it appears before us.

I reflected at length on the Speaker's right to reach back beyond the report to the House and to the actual proceedings of the committee, and like Speaker Rhodes, I have concluded that it is not competent for the Chair to do so on a report whose regularity is not itself in question. It is important for honourable Members and the viewing public to note that none of the complaints raised focus on the Report of the Committee per se. In the present case, no one has complained that the amendments or the Bill were not passed on majority votes.

Despite pressing invitations to do so by honourable Members aggrieved by the events in the Committee, the Chair must resist the temptation to go behind the Report and ascertain whether or not other procedures were questionable. This would only invite a deterioration of the long-standing practice that committees

are masters of their own proceedings. It would place the Speaker in the untenable position of standing in appeal to any decision of a chairman of standing, special and legislative committees, particularly in cases of high controversy and vigorous political debate like this one. This is not foreseen in our rules nor does our practice anywhere provide such a role for the Speaker. That being said I can only repeat the position I took on March 26.

Like the Speaker, a Chairman is the servant of the body that elected him or her. The Chairman is accountable to the committee, and that committee should be the usual venue where his or her conduct is pronounced upon.

That is the tradition of the Canadian House of Commons. If I am to respect that tradition, I should therefore avoid any comment on the conduct of the honourable Member for Mississauga South and let the Committee deal further with the matter if it so desires.

The majority of the Committee has decided not to report its dilemma to the House and I cannot substitute my judgment for theirs.

However, on the matter of whether this case constitutes a precedent, I want to be perfectly clear. Norman Wilding and Philip Laundry's work entitled *An Encyclopedia of Parliament* defines a precedent as:

A previous decision by the Chair, or a well-established procedure or usage which serves as an authority or guide when a similar point or circumstance arises in Parliament.⁵

In the ruling of March 26 [1990, at page 9757 of the *Debates*] I addressed the question of whether a 1984 incident in the Justice and Legal Affairs Committee constituted a precedent in the following manner, and I quote:

What occurred was the series of events and decisions made by a majority in a committee. Neither this House nor the Speaker gave the incidents any value whatsoever in procedural terms. One must exercise caution in attaching guiding procedural flags to such incidents and happenings.

The same reasoning applies to the present case. The majority of members in a standing committee supported a decision of the Chairman. The ensuing controversy which continues to preoccupy the House and your Speaker cannot lead us to describe this incident as a "well established procedure." If the current rules do not adequately provide for the consideration of business, then of course, honourable Members know that there are avenues available for reviewing those rules and recommending changes.

Postscript: On April 30, 1990, the Standing Committee on Finance tabled its Fourth Report, in which it recommended that the "question of committees' rules and procedures as they relate to the limiting of debate in cases where a Committee has reached an impasse be referred to the Standing Committee on Privileges and Elections." The Report was concurred in the same day⁶ and, accordingly, the

*Privileges and Elections Committee studied the matter. The Twenty-Fifth Report of the Standing Committee on Privileges and Elections entitled "Procedures relating to the limiting of debate in Committees" was tabled in the House on March 20, 1991, but was never concurred in.*⁷

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1. *Journals*, March 30, 1990, p. 1443.
 2. *Debates*, March 30, 1990, pp. 10003-20.
 3. This ruling is considered in the present chapter.
 4. See, in this chapter, the decision of May 14, 1987.
 5. N. Wilding and P. Laundy, *An Encyclopedia of Parliament*, 4th ed., (London: Cassell, 1972), p. 570.
 6. *Journals*, April 30, 1990, pp. 1612-3.
 7. *Journals*, March 20, 1991, p. 2727.

COMMITTEES

Interference in committee proceedings

Intimidation of witnesses; disclosure of information by a public servant; information disclosed outside committee proceedings; dismissal of a public servant; alleged breach of Members' privileges

February 18, 1987

Debates, pp. 3564-6

Context: During Question Period on February 11, 1987, Mr. Sergio Marchi (York West) asked the Deputy Prime Minister and President of the Privy Council (Hon. Don Mazankowski) a question about the dismissal of a public servant employed by the Department of Employment and Immigration. Mr. John Quigley had apparently been dismissed for providing information to Members. In the letter notifying Mr. Quigley of his dismissal, the Deputy Minister of the Department had written that one of the reasons for his dismissal was that "these actions contributed directly to the media attention and political controversy which ensued and which brought into public question the integrity of the Minister."¹

Later that afternoon, Mr. Fernand Jourdenais (La Prairie) rose on a question of privilege to argue that Members' privileges had been infringed by the Deputy Minister's decision and action, which cast doubt on the Committee members' integrity. Several other Members also participated in the debate, noting the importance of the ability of Members to obtain information without fear of negative repercussions to those who provide the information. Mr. Doug Lewis (Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council) noted that since Mr. Quigley had filed a grievance, it would be inappropriate for the Government to comment at length at that time. The Speaker took the matter under advisement² and handed down his decision the following day. It is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On February 11, 1987, the honourable Member for La Prairie raised a question of privilege with respect to the dismissal of an official at the Department of Employment and Immigration. The honourable Member alleged that the privileges of all Members of this House were affected by the decision and by the action taken by the Deputy Minister of the Department in question.

The honourable Member for York West, in his submission to the Chair, suggested that the Deputy Minister's action could lead to the withholding of information that is valuable and necessary for the Canadian public and as a consequence the very essence of why Members are elected to the House is thereby affected. The honourable Member for Spadina (Mr. Dan Heap) argued that the public servant in question had conversed with members of the Standing Committee on Labour, Employment and Immigration and was only making relevant information available to members of the committee.

The honourable Member for Glengarry—Prescott—Russell (Mr. Don Boudria) maintained that honourable Members should see this as an infringement of their rights and privileges. He stated that nothing should prevent honourable Members from putting questions in the House and that Members should not have to be afraid that if they do, people who provided them with information might be fired.

At the time the Chair took the matter under advisement, and I am now ready to report to the House. I should say that this matter has given the Chair a great deal of concern.

At page 72 of the Twentieth Edition of *Erskine May*, the following citation is found:

Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual Members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, which, being rather directed to the maintenance of its own collective authority than to the security of the individual Members, may be said to belong primarily to each House as a collective body. This is a useful distinction, but fundamentally it is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members. The Commons, in their reasons offered at a conference with the Lords in the controversy arising from the case of *Shirley vs Fagg*—

It is an old case referred to in the book from which I am quoting.

—in asserting that privilege of Parliament belongs to every Member of the House of Commons, declared “that the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption.”

I think I will come down on what has to be the legal side of the issue, but I should say that part of the complaint of honourable Members who raised the matter was that they felt that under the circumstances they would not be able to—and again I quote from *Erskine May* as I previously quoted—“freely attend the public affairs of the House, without disturbance or interruption”. That is why this case is difficult. It is also why the Chair must be careful to define the issue and to make a ruling which stays within bounds.

I must underline to the House that the ancient privileges enjoyed by Members, separately and collectively, are privileges enjoyed by Members of Parliament only. Such privileges do not apply to public servants or persons outside the House, and there is no osmosis of privilege because someone transacts or converses with a Member of the House.

I have reviewed the elements of the matter raised by the honourable Member for La Prairie, and I have found considerable difficulty in establishing evidence of a *prima facie* case of a breach of privilege; that is not to say that the matter is not a very grave concern.

The conversations referred to have taken place outside the House and outside the proceedings of the standing committee. The public servant was acting on his own initiative and not at the request of the Committee.

The Deputy Minister appears to have acted within the authority conferred upon him by law, and in exercising that authority, in the opinion of the Chair, has not breached privilege nor impeded Members in any way.

The honourable Member for La Prairie has asked the Chair to consider and rule upon the narrow question of whether or not parliamentary privilege has been infringed in this case. On the narrow grounds upon which I must decide, I cannot find that a valid question of privilege exists.

Having said that, the broader question raised by the honourable Member as to whether or not an injustice has occurred still remains to be answered. On that question, however at least at the moment and on the facts in front of me, I do not believe I have any authority to pronounce.

The honourable Member may, if he so wishes, bring this matter to the attention of the Standing Committee on Labour, Employment and Immigration. However, I must advise him that he does not have a well-founded question of privilege.

I repeat, the issue raised in this matter is a serious one. In these circumstances, and on the facts, I have had to decide that it falls short of a question of privilege. But there is a fundamental question that, at the moment at least, I do not feel I can answer, namely, the question which is always with us in a democratic institution of when and under what circumstances is it appropriate for a public servant to give information to Members of Parliament or others. As the Chair understands, there is a process still going on in which it will be left for others perhaps to decide. As I have said, this is a matter that can be taken by honourable Members to the Committee.

I want to thank all honourable Members for their interventions. I want to say again that I felt the intervention was well taken and that under the circumstances I have had to decide on the narrow point, and I have done so. The decision takes nothing away from the importance of the question and this decision in no way precludes Members from taking the matter further in another place. It is not to rule one way or the other on whether under the circumstances the particular public servant is receiving, as I said earlier in the ruling, justice in the ordinary sense of that word. Again, I thank honourable Members.

The honourable Member for Spadina has raised a question directed at the Chair perhaps for guidance. At this time the Chair would be very reluctant to make suggestions on what is still a hypothetical situation. The Chair is very consciously aware that this concern comes from all three Parties represented in this House. I think the appropriate course is to take the matter to the committee. It is there that the Committee, which is the master of its own procedure, will want to work out how it wishes to deal with the matter.

Committees, of course, are trying to find ways to cover new responsibilities, and this situation seems to be one of those with which the Committee itself, at least in the initial stages, will have to deal, on the assumption that honourable Members take the matter to the Committee.

However, I am mindful of the reason the honourable Member for Spadina has raised this question and the Chair is always ready to discuss difficult matters with honourable Members at any time, at their invitation to do so.

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1. *Debates*, February 11, 1987, pp. 3327-8.
 2. *Debates*, February 11, 1987, pp. 3330-1.

COMMITTEES

Interference in committee proceedings

Intimidation of witnesses; committees' rights and powers; non-interference by the Speaker in committee proceedings; committees master of their own proceedings; alleged breach of Members' privileges

December 9, 1987

Debates, pp. 11628-9

Context: On November 25, 1987, Mr. Svend Robinson (Burnaby) raised a question of privilege regarding the alleged interference with the proceedings of the Standing Committee on Justice and Solicitor General during the Committee's visit to penal institutions in the area of Kingston, Ontario. The Member claimed that two events had taken place which constituted a "very grave situation", and that one of these events breached the privileges of Members. The Member described the first event as the transfer of inmates from Millhaven to the Kingston Penitentiary two days before the Committee's arrival. In particular, Mr. Robinson mentioned the transfer of a Mr. John Avery, an inmate who was a member of the Inmates Committee, and who had been elected by all of the inmates. Mr. Robinson also claimed that some of the documents Mr. Avery had wished to present to the Standing Committee had been lost during Mr. Avery's transfer. The second matter noted by the Member was whether or not witnesses who were to appear before the Standing Committee had been put under pressure by their supervisors. Other Members also contributed their views on the events which had occurred. The Speaker adjourned the discussion on the matter in order to hear from other Members.¹

The following day, November 26, 1987, several other Standing Committee members also contributed their interpretations. Having noted the seriousness of the issue before him, having cautioned all Members that the place to deal with committee matters is before the committee, and having stated that "... I want everyone to understand clearly that the latitude given in listening to representations in this case will not necessarily be extended in every other case," the Speaker reserved his decision.² On December 9, 1987, the Speaker delivered his ruling, which is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On Wednesday, November 25, 1987, the honourable Member for Burnaby raised serious matters in the House which he believed were tantamount to contempt of the Standing Committee on Justice and Solicitor General during its recent visit to the various penal institutions in the Kingston area.

The honourable Member maintained that witnesses from Correctional Service Canada who appeared before the Standing Committee had been subject to pressure on the part of their superiors about what they should or should not say

before the Committee. The Chair has allowed the House to spend quite some time discussing this matter because any allegation of suborning witnesses should be a matter of concern to all Hon. Members.

I wish to thank the Solicitor General (Hon. James Kelleher), the honourable Members for York South—Weston (Mr. John Nunziata), Ottawa West (Mr. David Daubney), Niagara Falls (Mr. Rob Nicholson) and London East (Mr. Jim Jepson) for their timely interventions in this important matter.

After hearing these Members, especially the Chairman of the Committee, the honourable Member for Ottawa West, and after due consideration, I must repeat what I said following comments by honourable Members on November 26, namely that “the Chair is really not in a position to interfere with the affairs of a committee I want to re-emphasize that, generally speaking, Members with a complaint should go back into the Committee and sort it out there.”³

For further clarity, I refer all honourable Members to a previous ruling I made on November 18, 1987, which is found on page 10930 of *House of Commons Debates*, and I quote:

Previous rulings and parliamentary custom are quite clear. Committees are definitely in control of their own procedures. In this respect, I may refer honourable Members to *Beauchesne*, Fifth Edition, Citation 569(3), which reads as follows:

The Speaker has ruled on many occasions that it is not competent for him to exercise procedural control over the committees. Committees are and must remain masters of their own procedure.

From these and other citations quoted in that ruling I thus feel that the precedents are clear and, with regret, I cannot find that the honourable Member for Burnaby made out a *prima facie* case of privilege.

This matter may or may not merit further consideration but it should be first raised in the Standing Committee on Justice and Solicitor General. It is in that forum that the honourable Member should pursue the issue and ask the Committee to report the matter to the House. In this respect I refer all honourable Members to the *Debates* of April 28, 1987 and May 5, 1987, when a situation involving a committee matter was reported to the House following which Members raised a question of privilege thereon.⁴

The Chair has taken this opportunity to review several of the recent matters that have been raised in the House that relate to events in or around the committees of the House. I have told the House before that the Speaker has been somewhat tolerant because the new rules were made permanent just last June. It was, I think, predictable that the new committee system would experience some growing pains. In every case that I have reviewed since last June, every question of privilege on a committee matter probably should have been raised first in the committee.

The reason I mention this in this ruling is that I am increasingly concerned with the time consumed by the House on committee problems that are now fully within the Members' own reach and control. I regret that I must serve notice to all honourable Members that unless there is something of extraordinary seriousness I will be less disposed to allowing debate on such matters unless a committee has first reported thereon.

The reform of committees has conferred upon them larger mandates and greater powers. With that reform comes the responsibility and the challenge for committee members to deal with issues within the new parameters of the redefined committee system.

I would like to add, and this is only by way of a suggestion from the Chair which might prove to be helpful to all honourable Members, that perhaps Members, when they are carrying out their duties in committees, could go that extra mile to ensure that the sensibilities of fellow committee members are taken into account. If that is kept in mind, then some of the matters that have come before the Chair might well be able to be resolved with perhaps much less dispute and much less time consuming debate.

I thank all honourable Members for bringing these matters to the Chair. I hope that we can keep in mind the necessity that the Chair is bound by the rulings and the precedents and that Members will try to resolve these matters in committee. There is always a possibility of some extraordinary matter happening and, of course, under those circumstances I would want to look very carefully at that. I am not saying I would never take an application under those circumstances, but I would ask the co-operation of honourable Members, the co-operation of the chairman and members of committees to resolve the matters there.

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1. *Debates*, November 25, 1987, pp. 11171-8.
 2. *Debates*, November 26, 1987, pp. 11220-6.
 3. *Debates*, November 26, 1987, p. 11225.
 4. *Debates*, April 28, 1987, pp. 5299, 5329-30; May 5, 1987, pp. 5737-42. This question of privilege is considered in the present chapter; see the decision of May 14, 1987.

COMMITTEES

Interference in committee proceedings

Intimidation of witnesses; protection of witnesses; alleged breach of Members' privileges; matter involving a sub-committee having broken off its proceedings; *prima facie* question of privilege

December 4, 1992

Debates, p. 14631

Context: On December 4, 1992, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a question of privilege concerning the alleged threatening of a witness who had appeared before a sub-committee of the Standing Committee on Justice and the Solicitor General. The Member explained that on November 24, Mrs. Sheryl Eckstein, Founder and President of the Compassionate Healthcare Network Association, had appeared before the Sub-Committee on the Recodification of the General Part of the Criminal Code. During her presentation, Mrs. Eckstein showed a brief videotape of a Nazi film entitled "*I Accuse*". Following her presentation to the Sub-Committee, Mrs. Eckstein spoke on the telephone on December 3, 1992, with Ms. Kelly Crichton, Executive Producer of the television program *The Fifth Estate*, who threatened possible legal action on behalf of the Canadian Broadcasting Corporation (CBC) because of the testimony Mrs. Eckstein had given to the Sub-Committee.

Mr. Boudria contended that witnesses before committees enjoyed the same privileges as Members of the House, and are therefore accorded the temporary protection of the House for any evidence they may give. He informed the House that the Sub-Committee in question had terminated its proceedings for the next few months, which effectively precluded him from airing the issue in the Committee in a timely manner, and, in the event of prorogation, from ever airing it.¹

Mr. John Brewin (Victoria) voiced his support for Mr. Boudria's question of privilege. Mr. Jim Edwards (Parliamentary Secretary to Minister of State and Government House Leader) said that he had read an *Ottawa Sun* article on the subject and that the central issue might be one of copyright. In his opinion, there was a *prima facie* question of privilege.

The Speaker ruled immediately. He found sufficient evidence for the question of privilege and asked Mr. Boudria to move that the matter be referred to the Standing Committee on House Management. His decision is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: First of all I thank the honourable Member for Glengarry—Prescott—Russell for bringing this matter to the House, the honourable Member for Victoria who has made a helpful intervention, and the Parliamentary Secretary on behalf of the Government.

Some mention has been made that this matter arose in a committee and honourable Members will have heard me say many times that usually matters should be put back to committee. My own feeling is that under the circumstances which have been explained to me that is not the convenient or appropriate thing to do at this time.

I have listened carefully to what was said. I think this is an appropriate case for the Chair to rule that there is a *prima facie* case for privilege. I would ask the honourable Member for Glengarry—Prescott—Russell to move his motion.

Postscript: *The question on the motion was put immediately and adopted without debate. Accordingly, it was ordered,*

That the matter of the threats by Ms. Kelly Crichton against Mrs. Sheryl Eckstein, a witness before a parliamentary committee, be referred to the Standing Committee on House Management.

The Standing Committee on House Management tabled its Sixty-Fifth Report on February 18, 1993. Having reviewed the issue and having called as witnesses Mr. Boudria, Mrs. Eckstein and Ms. Crichton, the Committee concluded that there was not sufficient evidence that intimidation of a witness had occurred to justify finding a contempt of Parliament. The Committee did comment, however, that Ms. Crichton and the CBC “may have been over-zealous” in asserting concerns about journalistic integrity. The Committee suggested that Ms. Crichton and the CBC were unaware of parliamentary protection for committee witnesses and that this lack of knowledge may have influenced their actions. The Committee also reaffirmed the principles of parliamentary privilege and the extension of privileges to committee witnesses.

It was also concluded that because the Copyright Act does not refer explicitly to the House of Commons, the Act is not applicable to the proceedings of Parliament. Hence, a Member or witness could quote from a work without first obtaining the permission of the copyright holder. Finally, the Committee recommended that the Speaker write to Ms. Crichton and the CBC to advise them of the contents of the report.

The Report of the Committee was concurred in on February 25, 1993.²

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1. *Debates*, December 4, 1992, pp. 14629-31.
 2. *Journals*, February 25, 1993, p. 2568. The text of the entire Sixty-Fifth Report may be found in the *Minutes of Proceedings and Evidence of the Standing Committee on House Management*, February 18, 1993, Issue No. 46, pp. 7-11.

COMMITTEES

Interference in committee proceedings

Administration of an oath to witnesses; taking of an oath by senior public servants; committees' rights and powers; criticism by a Minister of the way committee proceedings were conducted

March 17, 1987

Debates, pp. 4265-6

Context: On January 28, 1987, the Standing Committee on Labour, Employment and Immigration, which was to hear from representatives of the Canada Employment and Immigration Commission, including Mr. Gaétan Lussier, Chairman of the Commission and Deputy Minister of Employment and Immigration, passed a motion requiring evidence given before the Committee on that day to be given under oath.¹ In an article in *The Globe and Mail* on March 6, 1987, the President of the Treasury Board (Hon. Robert de Cotret) was quoted as having criticized the Committee's decision to swear in the members of the Commission.

On March 9, 1987, Mr. John Rodriguez (Nickel Belt) raised a question of privilege regarding the comments made by the Minister. Mr. Rodriguez contended that the Minister's remarks imputed motives to members of the Standing Committee on Labour, Employment and Immigration, brought into question the Committee's right to swear in witnesses, and appeared to be advising a senior public servant to defy the Committee and the House. At the request of the Speaker, the matter was then adjourned until such time as the Minister could be present to respond.²

The following day, March 10, 1987, both the Minister and Mr. Jim Hawkes (Chairman of the Standing Committee on Labour, Employment and Immigration) rose to comment. Noting that the Vice-Chairman of the Committee, Mr. Fernand Jourdenais (La Prairie), had also raised a question of privilege on the same issue, but was unable to be present that day, the Speaker again adjourned the discussion.³ On March 11, 1987, Mr. Jourdenais supported Mr. Rodriguez' argument and defended the powers and rights of the Committee. The Speaker took the question under advisement⁴ and handed down his decision on March 17, 1987. It is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On March 9, the honourable Member for Nickel Belt raised a question of privilege arising out of certain remarks made by the Honourable the President of the Treasury Board in giving an interview to the press. The essence of the honourable Member's complaint was that the honourable Minister's remarks imputed motives to members of the Standing Committee on [Labour,] Employment and Immigration, that he questioned the right of the Committee to put witnesses under oath, and that he appeared to be counselling a senior civil servant to defy the Standing Committee and the House.

I think I have caught completely the tenor and direction of the comments of the honourable Member for Nickel Belt.

A day or so later when it was possible for the President of the Treasury Board to be in the Chamber, he rose and agreed that he had been correctly reported in *The Globe and Mail*. I should perhaps repeat the exact words which form the subject of the complaint:

It is a terrible precedent. I would never ask a public servant to testify under oath. The Committee is really saying he is a liar. I do not believe that I would have liked to see Gaétan Lussier walk right out of the room.

There appears to be no argument that the honourable Minister used those words.

The honourable Member for Calgary West and the honourable Member for La Prairie, the Chairman and Vice-Chairman respectively of the Standing Committee on Labour, Employment and Immigration, both contributed to the discussion and defended the Committee's right to conduct its proceedings in the way it had. They also made it quite clear that in requiring certain witnesses to testify under oath, the Committee was not implying that they were untrustworthy.

I must say, at the outset, that any parliamentary committee has the power to require witnesses to be sworn. I would also agree that in using this power, a committee is not reflecting adversely on the character of a witness. I can make the analogy with a Court of Law where all witnesses are examined under oath. This necessary practice does not imply that all witnesses are dishonest.

I think it is important to emphasize, in case there should be any misconception in any quarter concerning the powers and functions of parliamentary committees, that committees appointed by this House are entitled to exercise all or any of the powers that this House delegates to them. These powers include the right not only to invite witnesses to appear but to summon them to appear, if necessary. They include the right to examine witnesses on oath should the committee deem it necessary. The powers of standing committees to initiate investigations have recently been extended in the spirit of parliamentary reform. Standing Order 96 sets out in some detail the extent of these powers, which include the power to study and report on all matters relating to the mandate, management and operation of departments of government. The scope of operations of standing committees has thus been considerably widened and the power to summon public servants as witnesses is essential to the effective performance of their tasks. It can be expected that this power will be used more, not less, frequently in the future, and I think it is salutary to alert all those concerned to this fact of parliamentary life. I can therefore say in answer to the question raised by the honourable Member for Calgary West, that a witness once summoned by a parliamentary committee would be ill-advised to walk out because of an unwillingness to be sworn.

With regard to the existence of a question of privilege, I would remind the House that parliamentary privilege is breached by any action which threatens freedom of speech in the House or which otherwise obstructs honourable Members in the fulfilment of their duties. The honourable Minister used certain words in his remarks to the press which expressed in forceful terms his opinion of a certain action by the Committee. There is no doubt that these words were critical of the Committee. However, it was not apparent to the Chair that the freedom of action of the Committee or of any honourable Member had been restricted by anything the Minister said. He was expressing an opinion, not giving an order to his public servants. In fact, the honourable Member for La Prairie applauded the President of the Treasury Board for defending his employees in such a spirited manner.

The honorable Minister's words, which were no doubt delivered spontaneously, did nevertheless reflect upon the Committee's actions. The limits of parliamentary privilege are very narrow and have never been precisely defined. Privilege should never be interpreted in such a way as to be an obstacle to the free expression of opinion. At the same time, we all need to be careful in our choice of language when speaking of the legitimate proceedings of the House or its committees. Although the Chair finds no *prima facie* evidence of a question of privilege in this case, it is always wise to avoid offending those susceptibilities which can lead honourable Members to raise complaints of this nature.

I want honourable Members to take note of the fact that the Chair has very carefully examined the context in which the words of the Minister were spoken. On close observation I think that it is clear that—and I repeat this because it is important—the Minister was not giving any orders to any members of the Public Service. I hope that honourable Members will review carefully this judgment and that the committees of the House will examine carefully the reiteration that has been set out in it of the powers, obligations and duties of committees of this place.

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1. *Minutes of Proceedings and Evidence of the Standing Committee on Labour, Employment and Immigration*, January 28, 1987, Issue No. 20, pp. 3-4, 9-14.
 2. *Debates*, March 9, 1987, p. 3967.
 3. *Debates*, March 10, 1987, pp. 4011-3.
 4. *Debates*, March 11, 1987, p. 4049.

COMMITTEES

Committee exceeding its authority

Televised broadcast of committee proceedings without authorization of the House; breach of the practices of the House by allowing filming of committee's proceedings by the media

April 9, 1987

Debates, pp. 5015-6

Context: On April 9, 1987, Mr. Jean-Robert Gauthier (Ottawa—Vanier) rose on a question of privilege to claim that the Standing Committee on Human Rights had earlier that day exceeded its powers by voting "to allow the televised media to film part of the Committee's proceedings". Explaining that the televised broadcasting of House proceedings had been approved by a resolution of the House and was under the authority of the Speaker, he argued that a similar course of action should be followed for the broadcasting of committee proceedings.¹ The Member also reminded the House that he had raised a similar question of privilege on October 28, 1986.²

A number of Members addressed Mr. Gauthier's question of privilege. Many of the Members pointed to the dilemma the Human Rights Committee members faced because of the importance and high profile of the witness before the Committee, Mrs. Coretta Scott King, widow of the late Dr. Martin Luther King. The Chairman of the Committee, Mr. Reginald Stackhouse (Scarborough West), remarked that he doubted members of his Committee realized they were acting against the rules by allowing the broadcast of proceedings, and stated that the Committee meant no disrespect to the House. He contended that this decision of the Committee should not be regarded as a precedent, but rather as a specific response to the special circumstances of that meeting.³ The Speaker ruled as soon as the Members' remarks concluded. His decision is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: First, I want to say this is very important. I thank the honourable Member for Ottawa—Vanier for his intervention and also for the various points he made on the present position. It is clear. There is no objection to the principle of television in committees, but to a decision that shifts the authority, the power, against the rules. It is not appropriate for a committee to have televised broadcasting of its proceedings.

No one is pretending for a moment that what was done was other than a breach of the rules. There have been suggestions made that certain circumstances justify breaching rules. I remind all Members that that is a position which the Chair is sometimes very much tempted to take, but I try mightily to stay within the rules. If I did not I am sure all honourable Members would have something to say to the Chair, because I am your servant. The rules are made by this place and, of course, they are made to be obeyed.

Especially for the public which is listening to this debate I want to reassert that we are Members of Parliament; we are law makers, we are the inheritors of a tradition of the rule of law. As a consequence, none of us ought to take lightly the breaking of rules.

It so happens that in this case the very distinguished, remarkable and much loved Coretta Scott King was before the Committee. By the way, in my view the Committee had other options. It could have sat as an *ad hoc* group. It could have appended the proceedings to the further proceedings when they regrouped as a full committee. Perhaps that did not occur to the Committee, but I point out that there are other ways in which this could have been approached.

It is clear that there has been a disposition among some Members of Parliament to bring television into committees, or at least into some committees. The honourable Member for Cochrane—Superior (Mr. Keith Penner) pointed out very well that Question Period, while at its best is the finest accountability session in any free country, is not all of Parliament. I was pleased to hear him point out the incredible amount of work that goes on in committees. I am glad it has been said and repeated by Members, because as Speaker I often have to remind the public that when this place is not packed after Question Period it is because Members are at committees, of which there are 30 or 40 sitting at any given time including the legislative committees.

However, remembering that we do live by the rule of law I must remind honourable Members that our rules here are the precedents of rulings set by Speakers and the Standing Orders that honourable Members have set for themselves.

I remind honourable Members that on November 6, 1980, Speaker Sauvé said on exactly this point:

After listening very carefully to the debate this afternoon, I have not been persuaded to change my opinion or to reverse the opinion of my predecessor, and I must hold the view that the televising of proceedings of standing and special committees of the House may be authorized only by the House itself.⁴

Some time ago, before I became Speaker, the Board of Internal Economy suggested a form of order that could be presented to the House which would cover the televising of committees, or some committees. But that resolution has never been put to the House. As other honourable Members have pointed out today, if it is the disposition of this place to have television in the committees, or in some committees, or in some circumstances, then clearly the obligation lies on Members of all Parties to put the procedural rules in place to enable this to happen. Members from all Parties were at the committee today and all, quite frankly, have stated that they did want television for that proceeding. I can understand the reasons for that.

The honourable Member for Ottawa—Vanier, as he said at the beginning, has raised this matter before and it is not because he is against television in committee—which I understand—but because he has, I believe, a very appropriate regard for the fact that we make rules and we must live by them.

There has been some suggestion that perhaps this is a question of privilege. I do not think that it is in the interest of Members for me to really inquire very far in that direction. I think that enough has been said. I believe there is no question that what was done was against the rules, what was done could have been done in another way, and if it is to be done again it is up to honourable Members to make sure that it is done lawfully.

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1. *Debates*, April 9, 1987, pp. 5011-2.
 2. *Debates*, October 28, 1986, pp. 822-5.
 3. *Debates*, April 9, 1987, pp. 5012-6.
 4. *Debates*, November 6, 1980, pp. 4531-2.

COMMITTEES

Committee exceeding its authority

Committee proceedings; notice of meeting; items on the agenda; changes in the agenda; non-interference by the Speaker in committee proceedings; notice of motion not required

December 18, 1989

Debates, pp. 7059-60

Context: *On October 19, 1989, members of the Standing Committee on Consumer and Corporate Affairs and Government Operations were to meet, according to the notice of meeting, to continue the Committee's consideration of a draft report on the issue of credit cards. During the meeting, a motion to allow Mr. Donald Lander, President and Chief Executive Officer of Canada Post, to appear as a witness on October 31 rather than on October 24 was adopted.*

On October 20, 1989, Mr. Don Boudria (Glengarry—Prescott—Russell) rose on a question of privilege, arguing that this sudden change in the Committee's agenda was a breach of Members' privileges. He contended that a committee notice of meeting is equivalent to the Order Paper of the House and that committees are, by extension, restricted to discussing matters listed on their notices of meeting.

Mr. Albert Cooper (Parliamentary Secretary to the Government House Leader) then rose to say that the motion adopted by the Committee was simply intended to accommodate a busy witness. The Speaker responded that he would deal only with the procedural aspect, as it was not the place of the Chair to interfere in committee proceedings. The matter was taken under advisement,¹ with a decision being handed down on December 18, 1989. It is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: I am now ready to rule on the question of privilege raised on Friday, October 20 by the honourable Member for Glengarry—Prescott—Russell regarding proceedings in the Standing Committee on Consumer and Corporate Affairs and Government Operations the previous day. The honourable Member had made the case that he had been convened to a meeting of the Committee to discuss the specific subject matter, that during the course of the meeting a motion was moved relating to an entirely different subject, and that this constituted a breach of his privileges as a Member.

He further argued that the Committee notice of meeting is equivalent to the *Order Paper* of the House and that if a single item of business appears on the committee notice of meeting then only that item can be dealt with by the committee.

I have carefully considered the argument of the honourable Member and the excellent points made by honourable Members on both sides of the question. The Chair finds itself in some difficulty in addressing the specifics of the case made by the honourable Member for Glengarry—Prescott—Russell. According to our traditions and practices, the Chair ought not to intervene with the proceedings of a committee unless a problem has been reported by the committee to the House or in extremely unusual circumstances. It is also clear that disputes arising from committee meetings ought to be dealt with in that committee and not raised on the floor of the House. I will therefore not comment on the specific incident in the Standing Committee on Consumer and Corporate Affairs. The Chair is pleased, however, to comment on the larger questions which arose during the discussion of the honourable Member's grievance, which relates to committees dealing with business other than that listed on the green sheet announcing the date, time and place of the meeting.

Although Standing Order 116 states in part that “in a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable,” it is nonetheless a long-standing convention that notice is not required for any motion in committee.

Beauchesne Fifth Edition in Citation 571 reminds us that flexibility is the watchword in committee deliberations when it states:

Proceedings in the committees are more relaxed in nature than those in the House as the requirements which must be observed in the Chamber are not so strictly enforced when Members sit [as] committees.

This difference in practices between the House and its committees is nowhere more evident than when dealing with motions in amendment to the clauses of a bill. Motions to amend a bill in committee require no notice whatsoever. In the House, on the other hand, the Standing Orders specifically require that 24-hour written notice be given for motions in amendment at report stage of a bill.

This being the case, and while some Members may feel that it causes inconvenience and creates difficulties for the orderly pursuit of a committee's agenda, the Chair must rule that there is no procedural impediment to a committee's dealing with any matter within its mandate at any meeting of that committee regardless of the stated purpose or purposes of a particular meeting.

The Chair must also inform honourable Members that it has been unable to find any procedural authority to support the position of the honourable Member for Glengarry—Prescott—Russell and other honourable Members that the committee notice of meeting constitutes an *Order Paper* for the committee.

Should the House in its wisdom wish to alter this long-standing practice it can certainly do so, and there are several avenues open to achieve this end.

I thank the honourable Member for Glengarry—Prescott—Russell for raising this most interesting issue.

I hope that this judgment has helped to clarify the matter for all honourable Members.

1. *Debates*, October 20, 1989, pp. 4927-33.

COMMITTEES

Committee exceeding its authority

Committee proceedings; expunging testimony—mention in the Minutes of Proceedings; order and decorum; non-interference by the Speaker in committee proceedings; unparliamentary remarks by a witness—refusal to withdraw his remarks; committee powers

March 16, 1993

Debates, pp. 17071-2

Context: On March 10, 1993, the Legislative Committee on Bill C-113, *An Act to provide for government expenditure restraint* heard testimony from a representative of the International Association of Machinists and Aerospace Workers. During his appearance, the witness made comments to which several Members took exception. Following the refusal of the witness to heed the requests of Members to withdraw his remarks, the Committee agreed to a motion to expunge his testimony from the record.

On March 11, 1993, Mr. Cid Samson (Timmins—Chapleau) rose on a question of privilege to argue that the actions by the Committee the previous day were akin to censorship and could potentially affect the functioning of all committees of the House. In the Member's opinion, committees did not have the right to expunge verbatim records of committee proceedings, because it would leave an imperfect record of the testimony heard and this could create problems for those who dissent from the majority committee opinions in reports. Mr. Samson concluded by requesting that the motion for expunging testimony be declared void; that the expunged testimony be restored, or, alternatively, that the witness be invited to appear again before the Committee; that a declaration be made that expunging testimony was unacceptable; and that the question of the conduct of certain Members of the Legislative Committee be referred to the appropriate committee for consideration.

After hearing comments from the Chairman (Mr. Doug Fee) and other Committee members, the Speaker took the matter under advisement.¹ His decision, handed down on March 16, 1993, reiterates the points raised by the Members and is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: On March 11, 1993 the honourable Member for Timmins—Chapleau raised a question of privilege concerning an occurrence in the Legislative Committee on Bill C-113 the previous day. Members of the Committee had found remarks made by a witness to be offensive; and after the witness had refused repeated requests from both sides of the Committee table and from the Chair to withdraw the remark, the Committee had agreed to a motion that his evidence be expunged from the Committee's record.

The honourable Member indicated that the action taken was not within the Committee's powers because committee evidence and the testimony of witnesses before the committee are privileged; because the correction of the record, which is within the power of committee, cannot extend to the expunging of whole sections of the verbatim transcript, and finally because a majority of the Committee's members had acted to silence the witness. He also suggested that the Chairman of the Committee might have intervened during the hearing of the testimony to caution the witness or even to eject him.

In support of this position the honourable Member for Notre-Dame-de-Grâce (Hon. Warren Allmand) added that the extreme measure taken, of expunging the entire testimony because of one unacceptable statement, was unprecedented in his experience and contrary to democratic parliamentary procedures.

The honourable Member for Red Deer, the Chairman of the Committee, then briefly related the events in question from the Committee Chair's perspective. He indicated that he had been reluctant to interrupt the testimony at some earlier points on account of questionable remarks and that "one extremely inflammatory statement" had come at the very end of the testimony. At that time he had asked the witness to withdraw the remark. During the subsequent discussion he and other Members had repeated this request; but when the motion to strike out the witness' testimony was proposed he felt he had no choice but to put it before the Committee.

The honourable Member for Ontario (Mr. René Soetens) who had proposed in Committee the motion which has been brought to the Speaker's attention, argued that the Committee's action was in order because a Committee like the House has the power to enforce the rules of order and civility on all those within its ambit and also the power to order the exclusion of the public from its meetings. He also pointed out that the House had not yet received the report from the Committee relating to this question citing *Beauchesne* Sixth Edition, Citation 107, which states that the House deals with a question of privilege arising in committee on report from that committee.

I would like to thank the Members who contributed to the discussion on this point for the conciseness and restraint they have shown in making their arguments. The events occurring in Committee were clearly such as to cause strong feelings, and the Chair appreciates the rationality and objectivity with which all Members put their points of view.

I would particularly like to thank the honourable Member for Red Deer for his help. He seemed at one point to be beginning to wonder if the Chair of a legislative committee was as great a mark of honour as he had supposed; but I

would like to assure him that, in the eyes of the Speaker, selection to the Panels of Chairmen, like election to the Speakership, is a distinct mark of honour if not always good for the nerves.

With regard to the question that has been raised, I need hardly detail to the House the many occasions on which the Chair has clearly stated its reluctance to interfere in the proceedings of a committee. I have already mentioned the quotation by the honourable Member for Ontario of Citation 107 of *Beauchesne*.

As the House knows, however, this rule is not entirely inflexible. The Speaker may pronounce on such a question if it is very serious or urgent or if there is a lack of direct or recent Canadian practice available for the guidance of Members. Such a departure from regular practice cannot in my opinion be considered a precedent.

There are in fact some Canadian precedents for the deletion of short passages of the *Debates* of the House because of their unparliamentary or offensive character. The most recent of these that the Chair has been able to find dates from April [5 and 7,] 1933, when the Speaker ruled that an unparliamentary word previously used in the House should be expunged from the *Debates* of that day.²

May 21st edition at pages 634 [and 635] states that committees have expunged evidence which is “improper or inadmissible—which properly speaking [was] not evidence—and even the whole of the evidence given by a witness”. This is in accord with the implications of our own Standing Order 113(5) which gives a legislative committee the power “to print from day to day such papers and evidence as may be ordered by it”; and therefore necessarily the power to decide not to print.

The procedural objections raised to the committee’s action were, very briefly, because testimony is privileged and because the correction of the record cannot extend to wholesale deletion. It seems to the Chair that the privileged nature of testimony mentioned in *Beauchesne* Sixth Edition at Citation 106 refers to the witness’ immunity from prosecution rather than to any inviolability of the evidence itself. I agree that what was done in this case is not a correction as envisaged in *Beauchesne* Sixth Edition, Citation 828, but rather as I have mentioned a decision not to exercise the power which the Committee undoubtedly possesses.

Such a decision by a committee would of course be noted in its Minutes of Proceedings and *Erskine May* suggests, at page 636 of his 21st edition, that “the committee—indicate in the evidence as printed the places in the text where material has been omitted.” I understand in the present case these measures have been taken.

In conclusion, the Chair must find that the actions taken by the Committee, as outlined by its Chairman, were within its powers and that the matter raised by the honourable Member for Timmins—Chapleau does not under the circumstances constitute a question of privilege.

1. *Debates*, March 11, 1993, pp. 16872-6.
2. *Debates*, April 3, 1933, pp. 3630-1; April 5, 1933, pp. 3728-9; April 7, 1933, p. 3804.

COMMITTEES

Committee Chairman exceeding his authority

Committee proceedings; systematic obstruction; limiting of debate; time allocation; Standing Order 78(3); powers of committee chairs; applicability of the Standing Orders of the House of Commons to the proceedings of House committees; withdrawal of a motion; lack of consultation; rights of the minority; rights of the majority; appealing a committee chair's decision; committees master of their own proceedings; non-interference by the Speaker in committee proceedings; conduct of the committee chair

March 26, 1990

Debates, pp. 9756-8

Context: *On March 21, 1990, the Hon. Roger Simmons (Burin—St. George's) rose on a question of privilege to protest the decision made the previous evening by the Chairman of the Standing Committee on Finance, Mr. Don Blenkarn (Mississauga South). Since March 19, 1990, the Committee had been debating a motion by Mr. René Soetens (Ontario) regarding the Committee's consideration of Bill C-62, An Act to implement the Goods and Services Tax. Mr. Simmons argued that the Chairman had exceeded his authority by interrupting the proceedings, declaring the motion moved by Mr. Soetens deemed withdrawn and tabling a draft time allocation motion. Mr. Simmons further criticized the Chairman for announcing that his order was a "ruling", and that there could be no points of order or debate on it. The "ruling" was appealed by several members of the Committee, but the Chairman's decision was sustained by majority vote. The Chairman then declared, without putting the matter to a vote, that the meeting was adjourned.*

Several Members spoke in the course of the lengthy debate which followed. Some raised the issue of whether a committee chair may move a motion; whether time allocation may be invoked by a committee chair; whether a chair may adjourn a meeting arbitrarily; and whether the rights of the majority and minority had been fairly balanced. The Speaker took the matter under advisement¹ and handed down his decision on March 26, 1990. It is reproduced in extenso below.

DECISION OF THE CHAIR

Mr. Speaker: On March 21, 1990, the Chair received several notices of questions of privilege relating to an action of the Chairman of the Standing Committee on Finance on March 20, 1990.

The honourable Members complained that the Chairman of the Committee, the honourable Member for Mississauga South, had exceeded his authority by putting an end to a debate on a motion, declaring the said motion withdrawn and introducing a new order for allocation of time for the consideration in Committee of the Goods and Services Tax Bill. The Chairman also declared that this action on his part was in essence a ruling that there was to be no debate or points of order. The action of the Chairman was formally challenged

by a Member and the Chairman was subsequently sustained on a recorded vote of 7 yeas and 4 nays. The Chairman then declared the meeting adjourned without question put until March 26, 1990 at 3:30 p.m.

The Speaker has often informed the House that matters and procedural issues that arise in committee ought to be settled in committee unless the committee reports them first to the House. I have, however, said to the House that this practice was not an absolute one and that in very serious and special circumstances the Speaker may have to pronounce on a committee matter without the committee having reported to the House.

The matter that has been raised with the Chair is a serious one. Evidence of that is that eight honourable Members filed notices of questions of privilege and the Chair heard submissions for almost two hours on Wednesday last.

Because the matter is serious the Chair will respond in some detail. For clarity's sake, I will begin by listing the points that I will cover.

First, there are the points raised by the honourable Member for Burin—St. George's who was supported in argument by the honourable Member for Ottawa—Vanier (Mr. Jean-Robert Gauthier), the honourable Member for Yorkton—Melville (Mr. Lorne Nystrom), and the honourable Member for Edmonton East (Mr. Ross Harvey):

Did the Chairman exceed his authority in (a) declaring a motion withdrawn, (b) disallowing points of order, or (c) adjourning the committee arbitrarily?

Second, there is the point raised by the honourable Member for Yorkton—Melville which relates to a similar case that occurred on June 6, 1984 in the Standing Committee on Justice and Legal Affairs. Is that a valid precedent which should be followed?

Third, the honourable Member for Nickel Belt (Mr. John Rodriguez) invoked the principle of English parliamentary law that the minority must be protected from the tyranny of the majority. He asked that I review Standing Order 1 and seek guidance from other jurisdictions. The question is therefore: Should the Speaker overrule a majority decision made in committee?

Fourth, finally the honourable Member for Burnaby—Kingsway (Mr. Svend Robinson) referred the Chair to Standing Order 78(3) relating to time allocation. The question is: Does this Standing Order apply in committees?

Let me now address each point.

First, did the Chairman of the Finance Committee exceed his authority? A committee chairman is elected by the committee. Like the Speaker, he is the servant of the body that elected him or her. The chairman is accountable to the committee, and that committee should be the usual venue where his or her conduct is pronounced upon, unless and until the committee chooses to report to the House, which this Committee has not yet opted to do.

That is the tradition of the Canadian House of Commons. If I am to respect that tradition, I should therefore avoid comment on the conduct of the honourable Member for Mississauga South and let the Committee deal further with the matter if it so desires. There are also other means by which the Members may bring such an issue forward for debate on the floor of the House. In this case, as Speaker, I have decided to resist both the urgings of Members and my own temptation to comment at this time on the conduct of the Chairman.

Next, does the 1984 incident in the Standing Committee on Justice and Legal Affairs constitute a valid precedent?

Let me summarize that particular event. The bill was before the Committee and no progress was being made. The Chairman took it upon himself to break the impasse. The Committee, by majority vote, supported his decision with the opposition voting against it. The Chairman acknowledged the parliamentary significance of his action by resigning immediately after the bill was reported back to the House. The matter was raised in the House on June 8, 1984, and Madam Speaker Sauvé² refused to hear a question of privilege citing Citation 76 of *Beauchesne* Fifth Edition.

The story does not end there however and what subsequently occurred is very interesting. At the next meeting of the Committee the same individual was re-elected to the Chair of the Committee on a motion made by a Member of the Official Opposition, seconded by a New Democrat. All this can be found in the Minutes of the Standing Committee on Justice and Legal Affairs of June 6 and June 19, 1984. The outcome of that particular case was determined by the Committee, as it should be, and not by the Speaker. I would caution Members, however, in referring to this as a precedent. What occurred was merely a series of events and decisions made by the majority in a committee. Neither this House nor the Speaker gave the incidents any value whatsoever in procedural terms. One must exercise caution in attaching guiding procedural flags to such incidents and happenings.

Let me next deal with the points of the honourable Member for Burnaby—Kingsway relating to time allocation. Standing Order 78(3) reads as follows:

A Minister of the Crown who from his or her place in the House, at a previous sitting, has stated that an agreement could not be reached under the provisions of sections (1) or (2) of this Standing Order in respect of proceedings at the stage at which a public bill was then under consideration either in the House or in any committee, and has given notice of his or her intention so to do, may propose a motion during proceedings under Government Orders, for the purpose of allotting a specified number of days or hours for the consideration and disposal of proceedings at that stage; provided that the time allotted for any stage is not to be less than one sitting day and provided that for the purposes of this section of this Standing Order an allocation may be proposed in one motion to cover the proceedings at both the report and the third reading stages on a bill if that motion is consistent with the provisions of Standing Order 76(10). During the consideration of any such motion, no Member may speak more than once or longer than ten minutes. Not more than two hours after the commencement of proceedings thereon, the Speaker shall put every question necessary to dispose of the said motion. Any proceedings interrupted pursuant to this section of this Standing Order shall be deemed adjourned.

That standing order can be made to apply to the committee stage, but it must be moved in the House by a Minister. Once such a motion is adopted, it becomes a mandatory instruction to a committee considering a bill to deal with the legislation according to the wish expressed by the whole House.

Finally, the point raised by the honourable Member for Nickel Belt is the one that gives the Chair the most concern for it is an extremely valid one. The question is: When does the Speaker step in and judge that there has been an abuse by the majority?

I should like to remind honourable Members of comments I made in the House on April 14, 1987, at page 5119 of *Hansard*. I said:

It is essential to our democratic system [that] controversial issues should be debated at reasonable length so that every reasonable opportunity shall be available to hear the arguments pro and con and [that] reasonable delaying tactics should be permissible to enable opponents of a measure to enlist public support for their point of view. Sooner or later every issue must be decided and the decision will be taken by [a] majority. Rules of procedure protect both the minority and the majority. They are designed to allow the full expression of views on both sides of an issue. They provide the Opposition with a means to delay a decision. They also provide the majority with a means of limiting debate in order to arrive at a decision. This is the kind of balance essential to the procedure of a democratic assembly. Our rules were certainly never designed to permit the total frustration of one side or the other, the total stagnation of debate, or the total paralysis of the system.

The honourable Member for Nickel Belt suggested I look to other jurisdictions but I have found a comment of Speaker Lamoureux which is on point. On July 24, 1969, he said:

What honourable Members would like the Chair to do under the provisions of Standing Order 51 is to substitute his judgment for the judgment of certain honourable Members. Can I do this in accordance with the traditions of Canada, of Britain, and in all parliamentary systems where the Speaker is not the master of the House, in spite of what Standing Order 51 says? The Speaker is a servant of the House. Honourable Members may want me to be the master of the House today but tomorrow, when, perhaps in other circumstances I might claim this privilege, they might have a different opinion. It would make me a hero, I suppose, if I were to adopt the attitude that I could judge political situations such as this and substitute my judgment for that of certain honourable Members, either a majority or, perhaps, sometimes a minority. [But] I do not believe that this is the role of a Speaker under our system. I am not prepared at this time to take this responsibility on my shoulders. I think it is my duty to rule on such matters in accordance with the rules, regulations and standing orders which honourable Members themselves have turned over to the Speaker to administer.³

That is the end of Speaker Lamoureux's quote.

In the light of our long-standing practice and the wisdom of Speaker Lamoureux's, I have chosen not to substitute my judgment for that expressed by a majority on the Finance Committee, unless that majority decides to report its dilemma to the House.

The Chair has been unable to find the basis upon which to act at this time. That is not to say that under different circumstances the Speaker would not intervene. If I am cautious in not acting now it is simply because the Chair does not supervise the standing committee chairmen. That function belongs to the members of each committee and they have obvious avenues to pursue other than invoking privilege in the House.

At the same time, chairmen ought to be mindful of their responsibilities and make their decisions and rulings within the bounds of the fine balance provided by our rules.

I am grateful for the patience of the House and grateful to Members for their submissions.

I would urge all chairmen and members of committees to try and strive mightily to ensure that the general rules of this place are followed as far as is sensible and helpful in those committees. I remind honourable Members that endless points of privilege on what goes on in committee, when they fall short of that extreme situation where a Speaker might have to intervene, take up a great

deal of time in this House. I would ask all honourable Members to consider carefully what I have said in this ruling and also, perhaps, some of the things I have not said.

Postscript: On April 30, 1990, the Standing Committee on Finance tabled its Fourth Report, in which it recommended that the "question of committees' rules and procedures as they relate to the limiting of debate in cases where a Committee has reached an impasse" be referred to the Standing Committee on Privileges and Elections. The Report was concurred in the same day⁴ and, accordingly, the Privileges and Elections Committee studied the matter. The Twenty-Fifth Report of the Standing Committee on Privileges and Elections entitled "Procedure relating to the limiting of debate in Committees" was tabled in the House on March 20, 1991, but was never concurred in.⁵

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1. *Debates*, March 21, 1990, pp. 9588-604.
 2. *Debates*, June 8, 1984, p. 4484. It was indeed Speaker Francis and not Speaker Sauvé.
 3. *Debates*, July 24, 1969, p. 11568.
 4. *Journals*, April 30, 1990, pp. 1612-3.
 5. *Journals*, March 20, 1991, p. 2727.

CHAPTER 10 — PRIVATE MEMBERS' BUSINESS

Introduction

Private Members' Business, consisting of bills and motions presented by Members of Parliament who are not Ministers of the Crown, is taken up by the House during a period of the sitting day called Private Members' Hour. Since 1986, the Standing Orders governing Private Members' Business have undergone a number of fundamental changes and the application of these new Standing Orders and practices has occasionally given rise to difficulties requiring the intervention of the Chair.

Just prior to Speaker Fraser's term, the membership of the House had agreed to a series of provisional rule changes strongly influenced by the recommendations of a Special Committee on the Reform of the House which had been established in late 1984. This Committee, commonly known as "the McGrath Committee" named after its Chairman the Hon. James McGrath (St. John's East), presented three reports to the House, with its Third Report tabled in June 1985 containing sweeping recommendations with respect to the role of the private Member. Agreeing with one of its principal tenets, specifically upgrading the role of private Members, the House attempted through a number of Standing Order changes to improve the treatment of Private Members' Business and to provide more effective opportunities not only for the initiatives of private Members to be heard but also to be decided upon by the entire House.

The decisions selected for this chapter illustrate the issues which faced Speaker Fraser and the other Chair Occupants during this period of reform. Speaker Fraser was called upon to interpret a new Standing Order on petitions which impacted on Private Bill legislation, as well as to interpret a new Standing Order dealing with "similar items" of private Members' initiatives in the form of either bills or motions. In addition, he was called upon to respond to a question of privilege concerning the criteria used by the newly-instituted Standing Committee on Private Members' Business when deciding which items of Private Members' Business it selects as votable. Two of the rulings included in this chapter were in response to complaints about the manner in which Private Members' Public Bills were handled in legislative committees, while a further ruling concerned the right of a private Member to initiate debate on a subject, elements of which were already before the House through an initiative of the Government.

PRIVATE MEMBERS' BUSINESS

Petition for Private Bill; application of Standing Orders respecting certification and presentation of petitions

December 1, 1986

Debates, p. 1647

Context: *In February 1986, amendments to the Standing Orders were adopted on a provisional basis which provided, among other changes, for a new procedure for the certification and presentation of petitions.¹ The new Standing Order was numbered 106. At that time, the text of the Standing Orders included in the "Private Bills" chapter remained unchanged.*

On November 17, 1986, a petition for a Private Bill was recorded in the Votes and Proceedings as having been presented pursuant to Standing Order 132 (Private Bills chapter).² On December 1, 1986, the Speaker brought the entry in the Votes and Proceedings and the petition to the attention of the House. He then ruled on the application of Standing Order 106 to a petition for a Private Bill. This ruling is reproduced in its entirety below.

DECISION OF THE CHAIR

Mr. Speaker: The Chair wishes to report to the House on a matter of some importance concerning petitions introducing laws, and I will read the ruling.

An entry in the *Votes and Proceedings* of November 17 recorded the presentation of a petition whose petitioners requested the tabling of a Private Bill. The entry indicated that the petition was presented pursuant to Standing Order 132, which provides a time limit for receiving petitions for Private Bills.

The Standing Orders relating to petitions were recently changed. However, no account was taken of the implications of those changes in relation to private Bills. The present Standing Orders dealing with petitions are Standing Order 106 and Standing Order 106(2)(g). They provide that a petition must contain at least 25 signatures. No distinction is made between petitions seeking redress of grievances and those requesting private Bills. On the face of it, therefore, the requirement of 25 signatures applies to all petitions including those relating to Private Bills. It was for that reason that the petition in question was shown as having been presented pursuant to Standing Order 132 instead of Standing Order 106.

However, I feel the petition should have been presented pursuant to Standing Order 106, despite the requirement for twenty-five signatures. I suppose the fact that petitions for Private Bills are not exempted from this requirement is merely an oversight.

I do not believe it was the intention of the House to deny any individual or group the right to petition for a Private Bill by reason of the failure to obtain 25 signatures. I am therefore ruling, until such time as the House decides otherwise, that the requirement of 25 signatures does not apply to petitions for Private Bills, but that the other provisions of Standing Order 106 do apply. Presentation of all petitions will thus continue to be governed by Standing Order 106.

I suggest that the Standing Committee on Elections, Privileges and Procedure examine this problem in the course of its business and recommend amendments to the Standing Orders as appropriate.

Postscript: In June 1987, the Standing Orders were amended to correct this anomaly. Petitions for Private Bills were thereafter governed by a separate rule, distinct from that pertaining to "public petitions".³

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1. *Votes and Proceedings*, February 13, 1986, p. 1710.
 2. *Votes and Proceedings*, November 17, 1986, p. 196.
 3. *Votes and Proceedings*, June 3, 1987, pp. 1014-5. See Standing Order 132 in the June 8, 1987 version of the written rules.

PRIVATE MEMBERS' BUSINESS

Standing Committee on Private Members' Business; selection of votable items; criteria

December 4, 1986

Debates, pp. 1759-60

Context: *Amendments to the Standing Orders pertaining to Private Members' Business, adopted provisionally in February 1986,¹ provided that a new committee, the Standing Committee on Private Members' Business, would be empowered to select a certain number of motions and bills at second reading stage as "votable items." Although the Committee's selection of such votable items would be final, the new rules offered little guidance regarding what kinds of bills and motions should be selected. In May 1986, the Standing Committee, in a Report to the House, made known the "criteria" it would be using in its selection of votable items.²*

On November 19, 1986, Mr. Bill Domm (Peterborough) rose on a question of privilege concerning the reason, as reported in the press, for his Private Member's motion not having been selected by the Standing Committee as a votable item. The press report indicated that the Standing Committee had not chosen Mr. Domm's motion because its adoption would have empowered another standing committee, specifically the Standing Committee on Justice and Solicitor General, to do something it was already capable of doing by virtue of other provisional Standing Orders. Mr. Domm argued that for the Standing Committee on Private Members' Business to refuse to select motions such as his own would effectively block private Members from proposing that the House mandate a committee to conduct a study and report, a right that Members had always had. After hearing the views of other Members, the Speaker reserved his decision.³ On December 4, 1986, he rendered a ruling which is reproduced in its entirety below.

DECISION OF THE CHAIR

Mr. Speaker: Honourable Members will remember that on November 19 a question of privilege was raised by the honourable Member for Peterborough. The honourable Member expressed himself very forcefully and made it clear that he felt a deep sense of grievance, not only on his own behalf but on behalf of private Members on both sides of the House. It was also made clear during the discussion that his feelings are shared by other honourable Members.

The honourable Member for Burlington (Mr. Bill Kempling), who is Chairman of the Standing Committee on Private Members' Business, and other members of the committee made useful contributions to the discussion which clarified for us some of the problems faced by the committee and the approach the committee has been taking in the discharge of its functions.

The House is operating under a number of new procedures, those relating to Private Members' Business being among the most significant. The concept of the Standing Committee on Private Members' Business and the special responsibilities conferred on it are both new and original. There are no precedents to guide the committee. It has a very unusual power and I stress that it has a very unusual power in that its decision with regard to the selection of items of business which must come to a vote cannot be challenged. When embodied in a report which is presented to the House, that report is deemed adopted by the House. The committee, therefore, plays a very important role in safeguarding the rights of private Members.

There is a procedural point which I should perhaps clarify before proceeding any further. The items selected by the committee from those in the order of precedence resulting from the draws which take place throughout the session are commonly referred to as "votable items". The fact is that all items in the order of precedence are votable if the House is disposed to reach a decision on them during the time allocated to debating them.

The difference between the items selected by the committee and the other items in the order of precedence is that the former are guaranteed to come to a vote, provided nothing intervenes to prevent it, such as the prorogation of Parliament. They are therefore privileged items. The committee must determine, in accordance with a set of criteria which it has adopted and published in a report, how the selection is made. This is a crucial responsibility. It is not for the Chair to dictate to the committee how it should discharge its responsibilities.

However, the honourable Member for Peterborough raised an important question: Is it appropriate to use as a criterion the possibility that another committee might take the initiative of investigating the subject matter of a Bill or motion which happens to fall within its mandate? There is no guarantee that a committee will take the necessary initiative. Furthermore, there is nothing to prevent the House from making a specific reference to a committee even if that committee has an open mandate.

All items of Private Members' Business which were entered in the draw were previously examined and found to be in order. The motion of the honourable Member for Peterborough which was successful in the draw reads as follows:

That the Standing Committee on Justice and Solicitor General be empowered to study and report on the arguments for and against capital punishment giving consideration to allowing the question of capital punishment to come to a free vote in the House.

If the House were to adopt this motion, the matter would be referred to the Justice Committee. It cannot be assumed that without such a reference the committee would launch such an investigation. If the criterion I have referred to were to pass unquestioned, there would be numerous motions which would never stand a chance of being selected by the Private Members' Business Committee.

Most new procedures pose difficulties which had not previously been anticipated. The House is the master of its own procedure and can therefore change any with which it is not satisfied. The new procedures relating to Private Members' Business, among others, are provisional in their application because the House wanted to see how they would work before confirming them on a permanent basis. The complaint of the honourable Member for Peterborough, and the discussion which ensued upon it, clearly demonstrated to my satisfaction that there are aspects of these new procedures which need to be reconsidered. My point, however, is that this is a procedural matter which requires a procedural solution.

In summing up I would say that the Chair appreciated the concerns expressed by the honourable Member for Peterborough and other Members participating in the discussion. I have to rule though that the matter complained of relates to procedure rather than privilege. However, I would call upon the Standing Committee on Elections, Privileges and Procedure to give early attention to this matter and treat it with the priority it merits.

The new Standing Orders governing Private Members' Business are provisional and the time to deal with this problem is now. I am sure that I speak on behalf of all private Members when I express the hope that an early solution will be found.

I want to thank all honourable Members who contributed to the debate. I want to emphasize that it is the view of the Chair that this matter is serious, that there are other serious matters coming from the consequences of reform and it is the Chair's very fervent wish that honourable Members and the appropriate committee take cognizance of the remarks that I have made today and treat the matter with the urgency which I think all honourable Members feel is necessary.

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1. *Journals*, February 13, 1986, p. 1710.
 2. *Journals*, May 23, 1986, pp. 2200-1.
 3. *Debates*, November 19, 1986, pp. 13225-34.

PRIVATE MEMBERS' BUSINESS

Private Members' Public Bills; committee consideration; obstruction by committee members

December 9, 1987

Debates, p. 11628

Context: *On November 25, 1987, Ms. Lynn McDonald (Broadview—Greenwood) rose on a question of privilege to protest that Bill C-204, respecting the regulation of smoking in the federal workplace, standing in her name, was being treated differently in legislative committee than bills sponsored by Government Members and that progress on the Bill had been obstructed by certain members of the committee and its Chair. In her presentation, she argued that in the case of a Government bill, the membership on the relevant committee was weighted in favour of its passage, while in the case of her initiative the reverse was true. She then referred to a particular incident which had taken place in the committee room the previous day. After hearing from other Members, the Speaker reserved his decision.¹ The House continued its discussion on this question of privilege on December 1, 1987, by hearing from Mr. Ken James (Sarnia—Lambton) in his role as Chairman of the legislative committee appointed to consider the bill and further from Ms. McDonald.² The Speaker delivered his ruling on December 9, which is reproduced in its entirety below.*

DECISION OF THE CHAIR

Mr. Speaker: On Wednesday, November 25, 1987, the honourable Member for Broadview—Greenwood raised in the House the manner in which her Private Members' Bill C-204 is being dealt with in the legislative committee appointed to study the Bill.

The honourable Member for Broadview—Greenwood claimed that the Committee's proceedings were being systematically obstructed by Government Members sitting on the Committee and by the Committee's Chairman or Acting Chairman. She said that Government Members did not look favourably on the Bill and that the actions of the Acting Chairman on Thursday, November 24, 1987, reflected his prejudice against the Bill before the Committee.

I wish to thank the Deputy Prime Minister (Hon. Don Mazankowski) and the honourable Member for Mission—Port Moody (Mr. Gerry St. Germain) for their contribution to this important matter. The honourable Member for Sarnia—Lambton must also be mentioned, and I thank him for his helpful intervention.

I wish to remind all honourable Members of my ruling of November 18, 1987,³ where I cited several excerpts from the rulings of my predecessors concerning the established custom and traditions of the House in not interfering

in committee proceedings until such committees have reported to the House. This is an important rule that has clear underpinnings in logic, and I, of course, want to follow it.

Thus, after careful consideration, I have come to the conclusion that the honourable Member's complaint ought properly to be dealt with in committee and, therefore, it is not a question of privilege and cannot be dealt with here unless the matter is reported to the House by the committee.

There are established practices which have been followed for a long time. One is that Members refrain from criticizing the actions of another Member without the making of a clear charge set out in a motion. The traditional and proper way of dealing with the type of conduct alleged by the honourable Member for Broadview—Greenwood would be by appealing the conduct of the chairman to the committee, or by way of a motion proposed to the committee and, if it is adopted, reporting the same to the House.

I hope that in future honourable Members will be guided by what I said on November 18, 1987 and will formulate their complaints and grievances in the committees, which are entirely capable of dealing with these matters, instead of wasting the precious time of the House. The precedents are clear: These questions do not come under the jurisdiction of the Chair.

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1. *Debates*, November 25, 1987, pp. 11169-71.
 2. *Debates*, December 1, 1987, pp. 11370-3.
 3. *Debates*, November 18, 1987, p. 10930.

PRIVATE MEMBERS' BUSINESS

Private Members' Public Bills; application of Standing Orders; similar items

November 2, 1989

Debates, pp. 5474-5

Context: On October 20, 1989, Mr. Tom Wappel (Scarborough West) obtained leave to introduce a Private Members' Public Bill. Ms. Dawn Black (New Westminster—Burnaby) rose on a point of order to argue that the bill was substantially the same as two bills already on the *Order Paper* and that as a result, consideration of this bill would give rise to the same debate and its passage would have the same effect as the two bills already introduced and given first reading. Ms. Black therefore asked whether the Chair ought to have exercised its discretionary power under Standing Order 86(5) dealing with "similar items".¹ The Chair took the matter under consideration. On October 26, 1989, Ms. Black raised the same objection when Mr. Don Boudria (Glengarry—Prescott—Russell) introduced a Private Members' Public Bill that she felt was substantially the same as other bills already on the *Order Paper*.² The Speaker noted the Member's observations and indicated he would rule on both matters later. His decision on November 2, 1989 is reproduced *in extenso* below.

DECISION OF THE CHAIR

Mr. Speaker: Before I call orders of the day, I have an important point of order to respond to raised by the honourable Member for New Westminster—Burnaby on October 20 and again on October 26.

The Member questioned the inclusion on the *Notice Paper* of two items which she argued appeared to be substantially the same as two other Private Members' Bills now on the *Order Paper*, namely Bill C-261, standing in the name of the honourable Member for York South—Weston (Mr. John Nunziata), and Bill C-266, standing in the name of the honourable Member for Lambton—Middlesex (Hon. Ralph Ferguson). These two bills were introduced and read a first time on September 27, 1989 and October 10, 1989 respectively.

The first of these [items] is a bill introduced by the Member for Scarborough West on October 20. It is an *Act to Amend the Criminal Code (Human Being)*. The second was introduced last Thursday, October 26, by the Member for Glengarry—Prescott—Russell; it is an *Act to Amend the Criminal Code (Destruction of Foetus)*.

Standing Order 86(5) states:

The Speaker shall be responsible for determining whether two or more items are so similar as to be substantially the same, in which case he or she shall so inform the Member or Members whose items were received last and the same shall be returned to the Member or Members without having appeared on the *Notice Paper*.

The honourable Member is invoking this standing order to ask the Chair to use its discretionary power to keep these items from appearing on the *Notice Paper*.

When I say “to keep these items from appearing on the Notice Paper”, I should point out that the honourable Member has put the application forward on a perfectly logical and proper procedural motion and that is, of course, the only basis upon which I can respond. I want Members and the public to know that the honourable Member for New Westminster—Burnaby is raising a procedural point and she certainly has every right to raise it and to have it argued.

I have carefully considered the argument presented by the honourable Member and have reviewed the items in question with equal care. I should say that in the view of the Chair, two or more items are substantially the same if, first, they have the same purpose and, second, they obtain their purpose by the same means.

Accordingly, there could be several bills addressing the same subject, but if they took a different approach to the issue the Chair would judge them to be sufficiently different so as not to be substantially the same.

In my view, that is exactly the case we have here.

It is clear that the two bills which have already been given first reading, and the other two bills introduced and now awaiting first reading treat the same subject matter. Honourable Members will know, and the public should know, that the subject matter is the question of the unborn child and what the law ought to be with respect to that. On these grounds, they meet the first criteria for being substantially the same. However, on examination of their contents, the Chair has concluded that there are sufficient differences as to how they sought to accomplish their purpose so that they could not be judged to be substantially the same.

This approach accords with the practice both before and after the introduction of this standing order in 1986. The intent of the new rule was to give Members an opportunity to put before the House items of concern to them, but to prevent a multiplicity of identical bills being submitted in the draw for Private Members' Business. However, Standing Order 86(3) provides that any Member prevented from submitting a bill because of a decision of the Chair can add his or her name as seconder to a Bill already on notice on the *Order Paper*.

In the present case, the Chair has carefully examined the Bills in question and finds that there are sufficient differences in their content to allow them to proceed. I would, therefore, allow the honourable Member for Scarborough West and the honourable Member for Glengarry—Prescott—Russell to move first reading of their respective bills.

I thank the honourable Member for New Westminster—Burnaby for giving me the opportunity to clarify the position of the Chair with regard to Standing Order 86. Again, I stress that the point raised by the honourable Member was a

procedural one and one to which she was completely entitled to argue. I also want to say to the honourable Member that because of the nature of the bills, the Chair most carefully examined the references to various sections of the *Criminal Code*, and I do want to say to her that those various references did help to persuade the Chair that the bill should go forward. I assure the honourable Member that very considerable attention was given to the legitimate point of procedure which she has raised.

Postscript: Following the ruling, Mr. Wappel moved first reading of his bill on November 7, 1989; Mr. Boudria moved first reading of his bill on November 9, 1989.³

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1. *Debates*, October 20, 1989, pp. 4952-3.
 2. *Debates*, October 26, 1989, pp. 5138-9.
 3. *Journals*, November 7, 1989, pp. 820-1; November 9, 1989, p. 842.

PRIVATE MEMBERS' BUSINESS

Private Members' Public Bills; committee consideration; adjournment *sine die*

February 26, 1992

Debates, p. 7624

Context: On February 26, 1992, Mr. Scott Thorkelson (Edmonton—Strathcona) rose on a question of privilege to protest the decision taken by a legislative committee on February 18, 1992 to adjourn *sine die* its consideration of Bill C-203, An Act to amend the Criminal Code (terminally ill persons).¹ The Member noted that this unusual procedure effectively precluded any further consideration of the Bill by the legislative committee or by the House. Noting that Bill C-203 was a Private Members' Public Bill, Mr. Thorkelson went on to say that such actions could render meaningless the recent initiatives in parliamentary reform aiming to empower individual Members and to improve chances of success for private Members' legislation. He felt that the legislative committee was in contempt of the House and that his privileges and those of all Members had been breached.² After hearing from several other Members, including Mr. Gilbert Parent (Welland—St. Catharines—Thorold) in his role as Chairman of the legislative committee,³ the Speaker delivered his ruling.

DECISION OF THE CHAIR

Mr. Speaker: [...] I am fully aware of the implications of this particular situation. Some honourable Members have said they had no knowledge this was coming before the House. I hope all honourable Members realize that when I receive a question of privilege, that is the privilege of the Member applying until the Member has risen. I know there was no suggestion the Chair should have communicated with Members, but I hope all Members will know it would have been quite improper for the Chair to do so.

I compliment the honourable Member for Edmonton—Strathcona on his argument and I compliment him on how concise it was. It was brief and to the point. I have listened with great care to the honourable Member for Fraser Valley West (Mr. Robert Wenman) who of course has a very strong personal interest in this particular matter.

The first thing I have to look at, and the [honourable Parliamentary Secretary to the Government House Leader (Mr. Albert Cooper)] mentioned it, is that it is not for the Chair to get involved in matters within a committee unless there is something so egregious and so outrageous that it transcends the normal bounds and amounts to a contempt of the House or, in some extraordinary way, a breach of the privilege of an honourable Member and this does not.

First of all, does it affect any honourable Members' capacity to carry on their duties as Members of the House of Commons? The answer to that is no. All Members can carry on their duties as Members of the Houses of Commons. The second thing is whether there is some other procedural approach that might be

taken to deal with this matter in front of the whole House, as my honourable friend from Kamloops (Mr. Nelson Riis) has suggested. Yes, there is. A motion can be put down.

I go back very briefly to a citation which the honourable Member for Edmonton—Strathcona cited. I think I have the exact words: "The House should take cognizance of the matter".

That is really where we are. If the House wishes to take cognizance of this, if the House wishes to exercise its authority, then of course it may do so. But in my view, it would not be correct or proper at the present time for the Speaker to intervene.

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1. *Minutes of Proceedings and Evidence of Legislative Committee H on Bill C-203*, February 18, 1992, Issue No. 10, p. 3.
 2. *Debates*, February 26, 1992, pp. 7620-22.
 3. *Debates*, February 26, 1992, pp. 7622-24.

PRIVATE MEMBERS' BUSINESS

Motions; motion moved by a private Member dealing with a subject similar to that of a Government bill, the subject matter of which was being considered in a committee; same question

April 1, 1992

Debates, pp. 9208-9

Context: On April 1, 1992, at the beginning of *Private Members' Business*, immediately following the moving of a motion standing in the name of Mr. John Rodriguez (Nickel Belt), Mr. John Nunziata (York South—Weston) rose on a point of order. He was of the opinion that the House was getting into a debate on a motion the subject of which was already under consideration in a committee. The Member explained that Mr. Rodriguez' motion called for legislation establishing conflict of interest guidelines for Members of Parliament, Senators, senior bureaucrats and senior political staff. He mentioned that the Government had previously tabled Bill C-43 respecting the Senate and the House of Commons Conflict of Interests Act and had set up a Special Joint Committee to do a pre-study of the Bill in question. Mr. Rodriguez argued that no provision of the Standing Orders prevented the House from debating a private Member's motion on a subject similar but not identical to a matter before a parliamentary committee. Other Members also intervened in the discussion.¹ The Acting Speaker (Mr. Charles DeBlois) took the matter under advisement and allowed debate on the motion to begin. Later in the course of *Private Members' Business*, he delivered his ruling which is reproduced *in extenso* below.

DECISION OF THE CHAIR

The Acting Speaker (Mr. DeBlois): Before giving the floor back to the honourable Member for Nickel Belt, the Chair has had some time to think over the point of order raised by the honourable Member for York South—Weston. I do not think that it is good to leave the House uncertain and so I think it useful to go over the chronology of events, given the sensitive subject before us.

On May 13, 1991, the honourable Member for Nickel Belt presented a motion concerning, among other things, conflicts of interest for senior officials and senior political staff. On November 22, 1991, Bill C-43 was tabled in the House of Commons on first reading and this bill makes no mention of senior officials and senior political staff.

The same day, a special committee was created and the subject matter of Bill C-43, not the bill itself, was referred to it. On December 2, 1991, the motion of the honourable Member for Nickel Belt was placed on the order of precedence. It was drawn by lot and placed on the order of precedence and on December 10, 1991, the committee was struck to consider Bill C-43.

In summary, we are faced with certain principles, the first of which is the right of any Member to present bills and motions—this is an important point. Second, the motions are not identical. The motion for Bill C-43 is not the same as the one from the honourable Member for Nickel Belt, since this one extends the debate to senior officials and senior political staff. Finally, the motion is not votable. That is why, under the circumstances, I think the Chair can allow a debate limited to one hour, since on balance, weighing the pros and cons, I think that a Member's legitimate right to present a motion could be weakened or violated by an overly strict interpretation of the rule which forbids discussing a bill that is already being considered in committee.

All this is to say that I find the motion of the honourable Member for Nickel Belt to be in order and I again give him the floor for the three minutes remaining to him. Again I ask honourable Members to be careful in what they say since the subject referred to is part of the work now going on in a parliamentary committee.

Therefore I call on both sides of the House to co-operate.

1. *Debates*, April 1, 1992, pp. 9204-6.

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ANALYTICAL INDEX

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Possible violation of Charter of Rights and Freedoms

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Privilege**Contempt of House**

Advertising brochures, Goods and Services Tax, distribution to public, offending materials returned to department subsequent to the Chair's ruling on the advertisements for the GST

Minister requesting all exceptions be brought to his attention, matter settled, 12-3

Advertising campaign, Goods and Services Tax, government newspaper

Not *prima facie* case, but Chair not willing to accept similar actions in future, 3-11

Privilege ... Continued**Contempt of House ... Continued**

Committee, consideration of Private Member's bill adjourned *sine die*, precluding further consideration of bill

Does not affect Members' capacity to carry on duties, not correct for Chair to intervene at this time, 616-7

Demonstrators in gallery, disrupted proceedings and threw objects on Chamber floor

Guests of a Member, postponing matter until Member able to address question, Member made statement denying involvement and condemning actions of demonstrators, matter closed, 32-4

Prior knowledge of demonstration by Member, taking under advisement, evidence of Member's involvement largely circumstantial, time honoured tradition of accepting Member's word, cannot find privilege, 35-40

Deputy Speaker, acting as co-Chair of Progressive Conservative Party leadership convention, position not compatible with position as Deputy Speaker, not personal attack, nor criticism of manner in which duties carried out, perhaps appropriate to hear from Deputy Speaker, will consider matter and report back to House

Authorities not helpful, Deputy Speakers have exercised discretion to varying degrees, Chair has difficulty in agreeing that Deputy Speaker is subject to same exigencies as Speaker, not question of privilege, 62-3

Finance Minister, failure to table Custom Tariff Order in Council *re* suspension of privileges granted under Canada-United States Free Trade Agreement

Chair not to interpret/enforce matters of law, failure to table required documents may impede Parliamentary Committees' work, External Affairs and International Trade Standing Committee may report to House at which time Chair will consider hearing matter again, not accepted, 47-50

Fraud, charge against a Member, guilty verdict

When trial concludes Chair will take under advisement, and consider matter when it is appropriate under all the circumstances, 118-9

Voting twice on single formal motion

Member denied voting twice, Member apologized for any unintentional misunderstanding caused by his actions, matter closed, dilatory tactics, use, Chair cautioning Members, 276-7

Contempt of Parliament

Elections Commissioner, decision not to charge Minister with violations under Canada Elections Act, reflection on integrity of Parliament and Members

Privilege ... Continued

Contempt of Parliament ... Continued

Elections Commissioner, ... Continued

Elections Commissioner exercising powers under Canada Elections Act,
Chair cannot intervene where there has been no breach of privilege,
no charge of misconduct has been presented to Chair, not accepted,
56-9

Oath of allegiance to Queen, Member renouncing

Chair is not empowered to make a judgement on the circumstances of
the sincerity with which a duly elected Member takes the oath of
allegiance, Member stated that he did not repudiate his oath,
House must take his word, 106-9

Freedom of speech inhibited

Chair interrupting Member's statement under S.O. 21

Personal attacks on Members not permitted, not accepted, 152-4

Lawsuit by Hurtig Publishers Ltd. of Edmonton relating to *Order Paper*
question

No indication that legal proceedings commenced are based on
proceedings of Parliament but rather a published newspaper article
and comments by the Member made outside Parliament, all
avenues of defence against the action are available, not accepted,
67-71

Members' reputation impugned

Comments by a Member *re* alleged conflict of interest in land sale

Comments did not directly violate rules concerning making charges and
levelling accusations, Minister's denial of impropriety accepted and
Minister's ability to function not impaired, questions based on
innuendo are not in order and the privilege of freedom of speech in
House is limited, not accepted, apology, 94-7

Remarks by a Member *re* involvement of another Member's relative in
contract cancellation and re-awarding, deferring until Member in
House, imputation made by way of question or response can create
personal difficulties

Members should exercise caution in choice of words used and avoid
creating impression of personal attacks which reflect unfavourably
on House, no direct charge made, and inference of charge has been
denied, not question of privilege, 103-5

Misleading/false statements

Finance Minister and Prime Minister statements as to nature of White
Paper on Taxation, Ways and Means motion not designed to
implement full contents of White Paper

No evidence that Members were deliberately misled, not accepted, 21-2

Government advertising, radio broadcasts relating to Goods and Services
Tax, dispute between Members as to substance of advertisement

Chair cannot find basis for breach of privilege, not accepted, 14-6

Privilege ... Continued**Misleading/false statements ... Continued**

Partisan use of word "Parliamentary" by Progressive Conservative Party to describe news service, implication of non-partisan, all-party support and function, "parliamentary" defined as having to do with Parliament, not necessarily on a non-partisan basis, news service implies output relating to Parliament

Dignity and integrity of Parliament not offended, not accepted, 17-20

Rights of Members breached

Abuse, franking/stationery privileges, printing facilities, partisan use, subject more appropriately raised in another forum, not accepted, 23-4

Board of Internal Economy refusal to grant research funding to Bloc Québécois, seems to be matter of administration

Board of Internal Economy considered and rejected Member's request for additional funding, all Bloc Québécois Members receive full entitlements as Members of Parliament, rights not abrogated, not question of privilege, 114-7

British Columbia Supreme Court issuance of out-of-province subpoena in defamation case, breach of Member's right of immunity

Service of subpoena without Speaker's permission improper, Member voluntarily waived his privilege by acceptance, Members should not accept subpoena within parliamentary precincts, 74-8

Chair, disallowing oral question regarding comments by Canadian

Broadcasting Corporation board nominee *re* official languages policy

Beyond administrative responsibility of government, 163-4

Committees

Agenda, committee notice of meeting, similar to *Order Paper* by limiting discussion to agenda, motion to change agenda, no notice given

No procedural impediment to committee dealing with its mandate, no procedural authority to support idea that committee notice of meeting constitutes an *Order Paper* for the committee, not accepted, 592-4

Chairman, abuse of authority, ordering withdrawal of motion, disallowing points of order, ending debate, invoking time allocation, balancing the rights of majority and minority

Speaker unable to find the basis upon which to act and will not substitute his judgement for that expressed by a majority vote on committee unless that majority decides to report its dilemma to the House, 599-604

Chairman, resignation, Chief Government Whip's failure to convene meeting to elect new Chair

Chair ought not to intervene in committee business, Members requested to settle issue through negotiation, not accepted, 555-8

Privilege ... Continued

Rights of Members breached ... Continued

Committees ... Continued

In camera proceedings, leak to media, publishing of confidential information

Members should address own responsibility with regard to *in camera* deliberations, not accepted, 559-66

Lack of quorum, government Members boycotting Committee meeting

Not a matter upon which the Chair should take a position, not accepted, 555-8

Motion prohibiting Members from contacting committee researchers without permission of Chairman

Committee master of own procedures, proceedings should not be discussed or debated in House without formal report from committee, not accepted, 550-2

Private Members' bill, committee consideration, passage being obstructed by Chairman and other Members

Chair not in a position to interfere in Committee affairs, not accepted, 611-2

Public Servant, dismissal by Deputy Minister for talking to members of Standing Committee, denial of information

Privileges of Members of Parliament do not apply to public servants, remarks made outside House and Committee, Deputy Minister acted within authority, not accepted, 577-80

Televised broadcast of committee proceedings, unauthorized

Violation of rules, consent of the House required, not accepted, 589-91

Witness not withdrawing certain remarks, testimony expunged, committee exceeding authority

Chair reluctant to interfere in Committee proceeding, Legislative Committee has power to print evidence as may be ordered by it, actions taken by Committee were within its power, not accepted, 595-8

Witnesses, suborning, interference in proceedings, Correctional Services officials subjected to pressure over testimony to be given

Chair not in a position to interfere in Committee affairs, matter should be raised with Committee, not accepted, 581-3

Witnesses, swearing in, Minister's remarks, reflecting on Committee motion to have witnesses take an oath

Privilege ... Continued

Rights of Members breached ... Continued

Committees ... Continued

Witnesses, swearing in, Minister's remarks ... Continued

Committee acting within right to have witnesses sworn, not reflecting adversely on witnesses, Minister expressing opinion, no evidence that Committee freedom was restricted, Chair cautioning Members/Ministers to be careful in choice of words when commenting on Committee proceedings, not accepted, 586-8

Documents, tabling, Minister citing document, obligation to table

Minister not quoting, House must accept his word, not obliged to table document, 469-71

Estimates, Main

Part III reports, detailed expenditure plan, failure of government to table all reports, provide adequate information during *in camera* session preceding tabling, complaint of accuracy/credibility of certain figures

Government met requirements of Standing Orders, outstanding reports tabled, committee able to complete work in time available, no guarantee government will provide all information, not a procedure of the House, Member may obtain redress of complaint by raising it with relevant committee, 382-5

Federal Business Development Bank, denial of access to documents released to media

Member inconvenienced but not hindered in performance of duties, not accepted, 60-1

Former Member of Parliament, use of House stationery, jurisdiction of the House

Recourse action not in best interest, not proceeding with matter, 25-8

Government legislation (Patent Act (amdt.)), content released to stranger prior to introduction in House

Not accepted, 29-31

House of Commons, OASIS Group employee, entering offices of Members of Parliament and removing computer software without permission

OASIS staff attempting to ensure all offices had most up-to-date software, apologizing to Members for not fully informing staff of intent, policy statement concerning such cases issued, not necessary to proceed further, 87-9

Media publishing/broadcasting erroneous statements from Public Service Alliance of Canada press release *re* lack of support for striking federal language teachers, attempting to intimidate Member

Member may have grievance, involves dispute of facts, other remedies open to Member if she feels her reputation has been impugned, not accepted, 72-3

Privilege ... Continued

Rights of Members breached ... Continued

Member improperly dressed, denied right to speak

Proper attire, longstanding practice, Chair must enforce until practice changed by the House, not accepted, 463-4

Notice of closure on motion to establish Special Committee

House has adopted S.O. 57 on closure, Deputy Prime Minister has complied with terms, not accepted, 130-2

Office of Member of Parliament, contents moved to new location without permission or knowledge

Administrative matter, Chair and officials will meet with Member to discuss matter, not question of privilege, matter settled to everyone's satisfaction, 90-1

Official Languages Act, non-applicability to Parliament, legal opinion

Chair cannot rule on constitutional or legal questions, however, fundamental right to speak freely not abridged, not accepted, 44-6

Oral questions, allocation of time to Government Members

Not accepted, 172-3

Petitions, government responses not tabled within required period, rule has been breached, but no sanction is provided

Best solution is to accept undertaking by Parliamentary Secretary to investigate matter and report to House, 221-2

Political affiliation, Member listed as Independent, should be listed as Independent Conservative

Chair can find no prescription limiting the designation inserted under political affiliation in Appendix to Debates, Member may be listed as Independent Conservative in all official documents, 110-3

Private Members' Business Standing Committee, selection of votable items, criteria

Provisional procedures need reconsideration, procedural matter, not accepted, 608-10

Questions by Members relating to alleged conflict of interest by Cabinet Minister in Dome/Amoco negotiations, spreading innuendo and slander

Questions on conflict of interest in order, no evidence Minister's reputation damaged nor integrity questioned, Chair advising Members to avoid referring to persons by name who do not have parliamentary privilege, not accepted, 98-102

Remarks by a Member *re* another Member's communications manager, lawyer's request for retraction, attempt to silence Member, document served on Member without Speaker's permission, taking under advisement

Privilege ... Continued

Rights of Members breached ... Continued

Remarks by a Member *re* another Member's ... Continued

Words which were subject of action uttered outside Parliamentary precinct, not covered by privilege, letter does not fall under definition of legal process, no requirement to obtain permission of Chair, not a question of privilege, 79-81

Sub judice convention, invoking to avoid answering questions *re* misleading statements to House concerning RCMP laying of charges in budget leak

Proceedings in criminal trial cannot be split into that part to which *sub judice* convention is applied and the other where it does not, *sub judice* convention to apply in this case, not accepted, 477-81

Supply

Chief Government Whip, quorum call forcing adjournment of the House, loss of continuing order for Business of Supply

Opposition shares responsibility for maintaining quorum on opposition days, Business of Supply resumes at point of last House decision, 355-60

Financial Administration Act, government respecting terms

Chair has no authority to venture beyond the realm of parliamentary practice and procedure, not a question of privilege, 361-8

Government side-stepping Parliament in use of Governor General's Special Warrants

Government has respected all procedures required by House, not a question of privilege, 361-8

Speech from the Throne, request for Supply, omission

Tradition and not a requirement of the Standing Orders, not a question of privilege, 361-8

Telephone conversation between Member's office and inmate constituent, interception by Correctional Services employees, postponing until Solicitor General in House

Actions of prison officials have not hindered Member's right of speech, rights of privilege relating to Members do not extend to their staff, not accepted, 82-6

Ways and Means, White Paper on Taxation, giving access to outside consultants prior to releasing in House, breach of Budget secrecy principles

Budget secrecy a matter of parliamentary convention, no evidence outside consultants took advantage of or abused trust, Members not obstructed in fulfilment of their duties, not accepted, 410-2

Privilege ... Continued

Unparliamentary language

“Deliberate misrepresentation”, withdrawal of word “deliberate”, implying misrepresentation of facts

Argument over facts, matter of debate, matter closed, 492-3

“Traitor”, withdrawal requested, withdrawn, 502-3

Privilege, *prima facie*

Contempt of Chair

Chair, impartiality and integrity, Member's remarks outside House *re* Assistant Deputy Chairman of Committees of the Whole, withdrawal requested, matter could be further pursued in House, words as reported are *prima facie* case of privilege affecting dignity of House, withdrawal requested, refused, matter referred to committee, comments later withdrawn, 64-6

Contempt of House

Attempt by Member to prevent Sergeant-at-Arms from leaving Chamber with the Mace, challenge to authority of Chair, accepted, bringing Member to Bar of the House to receive reprimand, motion agreed to, 41-3

Demonstrators in gallery, disrupted proceedings and threw objects on Chamber floor

Affront to dignity of Parliament, accepted, 35-40

Contempt of Parliament

Finance Minister, failure to table Customs Tariff Order in Council *re* suspension of privileges granted under Canada-United States Free Trade Agreement, Minister has undertaken to investigate matter and report to House, deferring decision

Minister did not meet statutory requirement, *prima facie* breach of privilege exists, 51-5

Rights of Members breached

Committees, intimidation of witness by employee of Canadian Broadcasting Corporation, 584-5

Member disclosing recorded division results from *in camera* meeting of Standing Committee, criticizing decision

Recorded division results constitute part of *in camera* proceedings, accepted, 559-66

Members' access to Parliament Hill by taxi prohibited by RCMP, questioning of jurisdiction of Speaker outside walls of buildings, accepted, 92-3

Question and comment period

Budget speech, ten minute period after Minister's speech

No instances found where question and comment period allowed following a Budget speech, 459-61

Question and comment period ... Continued

Chair recognizing Members of Party other than that of Member speaking

Priority not to the point of exclusivity, 455

Member moving dilatory motion subsequently negated, denial of right of Members to question and comment

Member entitled to ten minute question and comment period if in House when debate resumed, 456-8

Questions on the Order Paper

Replies, preparation time and cost data included

Under S.O. 39, information not germane to information requested, should not be included in reply, 232-3

Replies, request within 45 days, failure by Minister to comply

Speaker cannot order reply, stands as a request until Standing Order is changed, 223-4

Transfer to adjournment proceedings debate

Admissible under Standing Orders, 237

Transfer to Notices of Motion for Production of Papers, S.O. 39(6), application

Elections, Privileges, Procedure and Private Members' Business Standing Committee may wish to give guidance, not accepted, 225-31

Quorum *see* Privilege—Rights of Members breached, Committees—Rights of Members breached, Supply

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Rights of Members breached *see* Privilege; Privilege, *prima facie*

Routine Proceedings

Individual items, reading aloud, streamlining procedures, elimination of requirement that names be read on each sitting day

Chair will announce heading, Member wishing to be recognized will rise, 195-6

Motions to proceed to next or particular items, dilatory motions, acceptability, absence of clear direction in Standing Orders, Chair using discretionary powers

Chair urged review of present rules to secure sanctity of Routine Proceedings and legitimate rights of all Members, motion admissible in the present case, 123-9

See also Motions, amendments and subamendments

Royal Recommendation *see* Bills, Government; Petitions—Acceptability, Petition called for; Supply—Appropriations bill

Sittings of the House

Extension, summer 1988, motion, acceptability, notice given under Government Notices of Motion, should have been presented under Motions; not within Government power to initiate motion to suspend Standing Orders and if motion is in order, approval must be by unanimous consent; motion making mockery of Parliamentary reform process, throws out Parliamentary calendar and puts principle of precedent in jeopardy, notice of motion could have been presented either way, many precedents available, leaves decision of method up to Minister presenting motion; Standing Orders have envisaged the concept of suspension of the rules, S.O. 56(1)(o) calls for motions to suspend the rules to be debatable provided notice has been given

Chair finds that since proper notice has been given, the motion is debatable, amendable and votable; Standing Orders call for motions to be decided by majority vote; Chair very supportive of Parliamentary calendar and recent reforms but cannot support the view that it cannot be changed except by unanimous consent, the rules must have a degree of flexibility or further reform is almost unachievable, motion in order, 240-7

Speech from the Throne *see* Privilege—Rights of Members breached, Supply

Speeches

Allotted time, 40 minutes

Mover not speaking, time deemed expired, third speaker entitled to not more than 20 minutes, 451-2

Statements by Ministers

Advance notice to opposition parties, not sufficient

Advance notice needed, question of courtesies and tradition, 186-7

Independent Members, right of reply

Speaker's authority to interpret statutes, bound by Standing Orders, unanimous consent denied, 188-9

Minister making statement on government policy outside House

Not stipulated in rules of the House, 190

Statements under S.O. 21 and S.O. 31

Attack, criticism of judgement exercised by a court

Judiciary references not permitted, Chair's obligation/tradition to constrain Member, 155-6

Personal remarks, not in order, 158-9, 160-1

Time limits, exceeding, 157

See also Privilege—Freedom of speech, Chair

Statutory instruments

Amending, motion, procedural acceptability questioned, motion has been filed in accordance with statute, *ultra vires* possibility, legal question

Chair has no authority to rule on legal matters, 265-7

Strangers *see* Motions, amendments and subamendments

Sub judice

Budget debate, British Columbia court challenge on bill implementing certain proposals, application of *sub judice* convention, postponing any further debate until case settled

Sub judice convention does not apply to bills as the right of Parliament to legislate must not be limited, civil case, convention not enforced until matter is at trial, budget debate is generally wide-ranging, Member at liberty to debate or not debate any aspect of the motion, Citation 508(4) of sixth edition of Beauchesne flawed, based on flawed citation in fourth and fifth editions, not applicable in this case, 482-7

Oral questions

Civil matter, not *sub judice* before trial stage, questions carefully drafted and appropriate, 475-6

Supply motions, allotted days, opposition motion not proper subject for debate, *sub judice* convention, application

Not criminal matter, *sub judice* convention does not apply to civil cases before trial stage, in order, 472-4

See also Privilege—Rights of Members breached

Supply

Appropriations bill, moneys granted by virtue of Governor General's Special Warrants

Lack of opportunity to examine provisions of bill

Chair bound by Special Order, solution is to amend Financial Administration Act or Standing Orders, 369-71

Royal Recommendation lacking for Governor General's Special Warrants

Not required since permission of Crown received already by approval of Special Warrants, 372-3

Estimates, Senate using to amend salaries without amending Parliament of Canada Act

Proceedings relating to the specific votes are declared null and void, 374-81

See also Privilege—Rights of Members breached

Supply motions, allotted days

Adoption, becoming an order binding on the government, procedurally unsound

Precedents exist of Standing Orders giving orders to the government, opposition free to choose its own motion, motion in order, 402-3

Amendment exceeding scope of motion, not in order, 402-3, 404-5

Designation

Orders of the Day not reached, day not lost, rescheduling, 400-1

Multiple notices of motions by same party prior to designation of allotted day, withdrawal of motions without consent, Chair's authority to select opposition motion, acceptability

Supply motions, allotted days ... Continued

Multiple notices of motions by same party ... Continued

Filing of motions in advance of designated day not prohibited by rules or practice, Standing Orders do not limit number of notices, Members retain right to withdraw notices of motion, rules of Supply authorize Chair to select motion for debate on Supply, in order, 391-4

Reduction of allotted days in proportion to sitting days, eroding historic authority of the House and rights of Members, motion to amend the Standing Orders attempting statutory and constitutional change, in whole or in part out of order

Purpose of Supply periods unchanged, arguably enhance the Supply process, Chair has no role in ruling on constitutional or legal matters, motion in order, 395-9

Votable item on Friday, designating non-deferrable vote, government deprived of 48 hours' notice due to embargo, no remaining votable supply motions

Notice requirement fulfilled, Chair bound to abide by normal practice of embargo, Special Order supersedes normal calculation of votable supply motions, 386-90

See also Sub judice

Time allocation

Motion, improperly moved, majority of representatives of parties in House had agreed to time allocation under S.O. 116

Standing Orders leave initiative of announcing agreement or non-agreement to Minister of the Crown; Minister must be party to agreement under S.O. 115 or S.O. 116 as moving motion implies Government support of proposal, Minister may proceed under S.O. 117 if no agreement, motion receivable, 301-4

Notice, improperly given

Majority of representatives of parties in House had agreed to time allocation under S.O. 116, allotted time not specified in motion, only notice of intention required and not notice of text of motion, existing precedents, notice in order, 301-4

No prior consultation with opposition, wording did not conform with Standing Order, notice ruled invalid, 136-7

Use, Government action inappropriate, refusing motion, Speaker's discretion Government has followed House rules, 305, 306-8

Ultra vires see Statutory instruments—Amending

Unparliamentary language

Prime Minister's remarks during oral questions

Chair did not hear remarks, not recorded in *Hansard* or electronic *Hansard*, Chair cannot compel any Member to attend or make a statement, a dispute that the Speaker is unable to resolve, matter closed, 499-501

Unparliamentary language ... Continued

Sexist and racist statements

Decorum, level, responsibility of Members on all sides, 496-8

Withdrawn, Chair disallowing continuing debate on matter, 494-5

Withdrawal requested, Member's refusal

Chair not recognizing Member until withdrawal made, 488-91, 502-3

Naming of Member, 504-6

See also Privilege

Ways and Means

Bills, introduction and first reading based on Ways and Means motion not yet concurred in

Proceedings ruled null and void, 419

Budget, presentation, Special Order by unanimous consent, budget leak, opposition parties withdrawing unanimous consent

Chair bound by Special Order of the House, not in order, 406-9

Document referred to in motion not tabled in the House, impact on scope of bill, possible amendments, procedural acceptability

Document well known and accessible to Members, no requirement that motions only refer to documents tabled in the House, motion permits considerable scope for amendments to the bill, second reading allowed to proceed, 413-8

See also Bills, Government—Omnibus; Privilege—Rights of Members breached

